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VOLUME II

TRANSCRIPT OF RECORD

SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1952

No.

ST. JOE PAPER COMPANY, ET AL.,
Petitioners,

versus

ATLANTIC COAST LINE RAILROAD COMPANY
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Volume II—Pages 237 to 715, inclusive

TRANSCRIPT OF RECORD

UNITED STATES

COURT OF APPEALS

FIFTH CIRCUIT

No.

In the Matter of

FLORIDA EAST COAST RAILWAY COMPANY,
Debtor.

ATLANTIC COAST LINE RAILROAD COMPANY,
Appellant,

versus

ST. JOE PAPER COMPANY, ET AL.,
Appellees.

Appeal from the United States District Court for the Southern District of Florida

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(ORIGINAL RECORD RECEIVED JULY , 1952)

BLEED THROUGH

INDEX*

VOLUME I

	PAGE
Fifth Supplemental Report of the Commission	81-191
Sixth Supplemental Report of the Commission (including as an appendix the Modified Plan of Reorganization Approved by the Commission)	195-226
Objections of First and Refunding Mortgage Trustees and others, to Plan of Reorganization and Motion to Dismiss Proceedings	1
Additional Objections of F. K. Conn, *et al.*, and W. G. Welbon, *et al.*, to Plan of Reorganization	40
Additional Objections of St. Joe Paper Company to Plan of Reorganization	46
Motion to Vacate Order of May 18, 1948	56
Objections of duPont Trustees to Plan of Reorganization	59
Objections of Lynch Interests to Plan of Reorganization, and Claims for Equitable Treatment	89
Objections of Southern Railway System Lines to Plan of Reorganization	99
Objections of Seaboard Air Line Railroad Company to Plan of Reorganization	103
Objections of Railway Labor Executives' Association to Plan of Reorganization	107
Objections of Greater Miami Traffic Association and Miami Chamber of Commerce to Plan of Reorganization	115

* This Record printed in three (3) volumes, a complete index in each volume.

PAGE

Objections of W. R. Huggins, *et. al.*, to Plan of Reorganization 118

Objections of Florida Railroad and Public Utilities Commission to Plan of Reorganization 122

Motion by Party in Interest to Dismiss the Reorganization Proceedings 125

Opinion of Court 127

Order dated and filed March 11, 1952 168

Notice of Appeal 170

Order Extending Time for Filing Record 172

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company 173

Statement of Points of Atlantic Coast Line Railroad Company 230

Request of Atlantic Coast Line Railroad Company that Specified Portions of the Record on Appeal be Printed Prior to its Transmission to the Court of Appeals 235

VOLUME II

Designation by Appellees of Additional Matter to be Included in the Record on Appeal 237

Designation by Appellees for Printing of Additional Portions of Record 243

Transcript of Hearing, February 4-7, 1952 247

WITNESSES.

William A. Gordon,
Direct 275
Cross 321
Re-direct 338

BLEED THROUGH

PAGE

John H. Bickley,
Direct 340
Recalled:
Direct 412
Cross 417
Re-direct 486
Re-cross 496

J. R. Stanfield,
Direct 402
Cross 412

Robert S. Bartlett,
Direct 511

Louis F. Ormond,
Direct 549
Recalled:
Direct 622
Cross 641
Re-direct 654
Re-cross 655

William G. Stott,
Direct 564
Cross 591
Re-direct 615

Frank D. Lemmon,
Direct 617
Cross 618

Motion of St. Joe Paper Company to Vacate Intervention of Atlantic Coast Line Railroad Company 660

Petition of St. Joe Paper Company for Entry of Order Imposing Lien in Favor of First and Refunding Mortgage Bondholders 663

Motion of St. Joe Paper Company for Leave to Amend Petition Relating to Liens 670

Amended Petition 671

PAGE

Order Respecting General Additions and Betterments for the Year 1947 679

Order Authorizing Trustees to Construct Buildings and Facilities at Miami and Lease Same to Acme Fast Freight, Inc. 681

Order Denying Petition of Atlantic Coast Line for Modification of Previous Orders 685

Order Extending Time for Filing Record 688

Portion of Transcript of Hearing, July 10-11, 1947 689

Portion of Transcript of Hearing, July 25, 1947 691

Portion of Transcript of Hearing, October 1, 1948 701

Portion of Transcript of Hearing, May 17, 1948 713

VOLUME III

EXHIBITS.

Lynch Interests Exhibits Nos. 1-A to 22-A, 25-A, 26-A, 27-A and 28.

St. Joe Paper Company Exhibits Nos. A to Z and AA to DD.

Deposit Committee Exhibits Nos. 1 to 8.

Atlantic Railroad Company Exhibits Nos. 1 to 10 and A.

BLEED THROUGH

Designation by Appellees of Additional Matter to be Included in the Record on Appeal.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILROAD COMPANY, Debtor.	No. 4827-J.

To the Clerk of the above-named Court:

The undersigned Appellees, as authorized by Rule 75(a) of the Federal Rules of Civil Procedure, designate the following additional matters to be included in the record on appeal in this action, in addition to those already designated by Appellant.

1. Certain papers relating to lien orders heretofore entered in this cause as follows:

(a) Transcript of Hearing on April 22, 1949, which resulted in Court order of April 26, 1949; and order of April 26, 1949 (Doc. 765).

(b) Petition of St. Joe Paper Company, filed on July 30, 1948, for an Accounting by Trustees and for order imposing lien for additions and betterments between July 1, 1944 and July 1, 1947.

(c) Transcript of Hearing on June 28, 1950, which resulted in the order of June 29, 1950; and order of June 29, 1950 (Doc. 868).

(d) Transcript of Hearing on September 11, 1951, which resulted in the order of September 11, 1951; and order of September 11, 1951 (Doc. 943).

Designation by Appellees of Additional Matter to be Included in the Record on Appeal.

(e) Transcript of Hearing on October 3, 1951, which resulted in order of October 3, 1951; and the order of October 3, 1951 (Doc. 956).

(f) Motion of St. Joe Paper Company to vacate the order of May 18, 1948, filed January 2, 1952 (Doc. 1003).

(g) Motion of St. Joe Paper Company for leave to amend petition for Lien and Amended Petition, filed January 21, 1952 (Doc. 1002).

2. Certain papers relating to the determination of the "free assets," as follows:

Date of Filing	Proceedings
Dec. 8, 1948.....	Motion by New York Trust Company as Trustees of Florida East Coast Railway Company Equipment Trust, Series D, for a reference to a special master to take testimony, and notice of motion (Doc. 720).
Dec. 15, 1948.....	Order of reference appointing V. F. Halter as special master to take testimony, etc. (Doc. 721).
April 4, 1949.....	Report of Special Master on petition of New York Trust Co. for determination of free assets (two volumes) together with exhibits.
April 22, 1949.....	Statement of estimated free cash available as of February 28, 1949.
May 25, 1949.....	Notice of Appeal by the New York Trust Co. as successor trustee of Florida East Coast Railway Company Equipment Trust, Series D, from the order declaring certain assets free of liens, dated and filed March 23, 1949 (Doc. 780).

BLEED THROUGH

Designation by Appellees of Additional Matter to be Included in the Record on Appeal.

May 25, 1949	Appeal bond filed by New York Trust Co. as successor trustee.
May 25, 1949	Notice of cross-appeal by Guaranty Trust Co. of New York and Arthur E. Burke, as Trustees, from order declaring certain assets free of liens dated and filed March 23, 1949 (Doc. 781).
May 25, 1949	Notice of cross-appeal by The Manhattan Company and J. Bryson Aird, as Successor Trustees, from order declaring certain assets free of liens, dated and filed March 23, 1949 (Doc. 782).
June 1, 1949	Stipulation as to extension of time for filing record on appeal and cross-appeal filed May 25, 1949.
June 1, 1949	Order signed May 30, 1949, extending time for filing record on appeal and cross-appeals filed May 25, 1949, until August 23, 1949.
Dec. 7, 1949	Notice of hearing on proposed stipulation for dismissal of appeal and cross-appeals from order entered March 23, 1949.
Dec. 7, 1949	Affidavit of service by mail of notice of hearing and proposed stipulation.
Dec. 13, 1949	Stipulation as to dismissal of appeal and cross-appeals from order entered on March 23, 1949 (Doc. 804).
Dec. 13, 1949	Order directing Trustees to purchase Series D Equipment Trust unsecured claim, and dismissing appeals from order of March 23, 1949 (Doc. 805).

Designation by Appellees of Additional Matter to be Included in the Record on Appeal.

Dec. 21, 1949..... Transcript of hearing held on Dec. 13, 1949 on proposed purchase of deficiency claim of New York Trust Company, as successor Trustee of Series D Equipment Trust.

3. Certain papers filed prior to the hearing held on February 4-12, 1952 in preparation for said hearing as follows:

Date of Filing	Proceedings
Jan. 7, 1952.....	Request by St. Joe Paper Company addressed to Atlantic Coast Line Railroad Company for admission.
Jan. 7, 1952.....	Interrogatories propounded by St. Joe Paper Company to Atlantic Coast Line Railroad Company.
Jan. 7, 1952.....	Motion by St. Joe Paper Company for production and copying of certain documents of Atlantic Coast Line Railroad Company.
Jan. 18, 1952.....	Reply of Atlantic Coast Line Railroad Company to request for admission by St. Joe Paper Company.
Jan. 18, 1952.....	Answers of Atlantic Coast Line Railroad Company to interrogatories propounded by St. Joe Paper Company.
Jan. 23, 1952.....	Request for admissions under Rule 36, and interrogatory propounded to Atlantic Coast Line Railroad Company under Rule 33 of the Federal Rules of Civil Procedure by St. Joe Paper Company and du-Pont Trustees, dated Jan. 18, 1952.

BLEED THROUGH

Designation by Appellees of Additional Matter to be Included in the Record on Appeal.

Jan. 25, 1952..... Notice of and objections by Atlantic Coast Line Railroad Company to request for admissions and interrogatory dated Jan. 18, 1952.

Jan. 31, 1952..... Objections by Atlantic Coast Line Railroad Company to request for admissions and to interrogatory dated Jan. 18, 1952.

4. Transcript of Hearing on objections to the 1948 Plan, pages 35-116; line 15, page 647, to line 6, page 1035; line 5, page 1037, to line 11, page 1048.

5. Notice of Motion for Leave to file Answer, etc., and Answer of Atlantic Coast Line Railroad Company to Petition of W. G. Welbon, et al., for payment of interest filed on March 7, 1949 (Doc. 893).

6. Answer of Atlantic Coast Line Railroad Company filed on March 7, 1949 to petition of S. A. Lynch Corporation and their associates, filed August 26, 1948, for prepayment of First Mortgage Bonds as proposed to be amended by "Amendment to Petition" served on or about February 19, 1949 (Doc. 852).

7. Transcript of hearing held on April 4, 1952 on motion by Atlantic Coast Line Railroad Company to amend Order entered March 11, 1952.

8. Order dated June 6, 1952 extending time within which to file and docket appeals and to file the transcript of record on appeal.

Dated at Jacksonville, Florida, this 11th day of June, 1952.

(Bedell and Bedell, of Counsel)
(Appleton, Rice and Perrin, of Counsel)
Appearing for President and Directors of
The Manhattan Company and J. Bryson
Aird as Successor Mortgage Trustees.

Designation by Appellees of Additional Matter to be Included in the Record on Appeal.

(MACFARLANE, FERGUSON, ALLISON & KELLY, of Counsel)
Appearing for appellees, F. K. Conn, Edith F. Conn, Sherman B. Forbes, Helen M. Forbes, Christine L. Holtsinger, Holtsinger Motor Company, A. E. Beyer, Nell C. Sloan and Everett E. Hennie.

(WALTON, HUBBARD, SCHROEDER, LANTAFF & ATKINS, of Counsel)
Appearing for appellees, W. G. Welbon, E. N. Claughton and A. W. Corbett.

GILES J. PATTERSON (PATTERSON, FREEMAN, RICHARDSON & WATSON, of Counsel)
JOHN R. TURNEY,
Appearing for St. Joe Paper Company, appellee.

HENRY P. ADAIR
DONALD RUSSELL
CLARENCE G. ASHBY
(ADAIR, KENT, ASHBY & MCNATT, of Counsel)
Appearing for appellees, Jessie Ball duPont, et al., as Testamentary Trustees of the Trust Estate of Alfred I. duPont, deceased.

J. TURNER BUTLER (OLIVER & DONNALLY, of Counsel)
Appearing for the appellees, S. A. Lynch, Sr., S. A. Lynch, Jr., S. A. Lynch Corp. and Ruby Russell Lynch.

Endorsed:

"Filed June 11, 1952, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk."

BLEED THROUGH

Designation by Appellees for Printing of Additional Portions of Record.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

To the Clerk of the above-named Court:

On behalf of the undersigned appellees, request is made that the following additional portions of the record on appeal be printed or photo-lithographed prior to its transmission to the United States Court of Appeals for the Fifth Circuit:

1. Transcript of Hearing Feb. 4-7, 1952 on objections to Fourth Plan (pages 1-607), Volumes I, II, III, IV, and all exhibits introduced at that hearing, viz: Lynch Interest Exhibits Nos. 1-a to 22-a inclusive, 25-a, 26-a, 27-a and 28; St. Joe Paper Company Exhibits Nos. A to Z inclusive; AA to DD inclusive; Deposit Committee Exhibits Nos. 1 to 8, inclusive; Atlantic Coast Line Railroad Company Exhibits Nos. 1 to 10 inclusive and A.

2. Transcript of Hearing July 10-11, 1947, beginning on page 194 beginning "The Court: I think the Court certainly has the power" to page 197, the

sentence ending ". . . whatever liens this Court puts upon the property."

3. Transcript of Hearing held on July 25, 1947, beginning on page 2 to the end of the paragraph on line 18, page 7; beginning on line 8, page 11, and ending on line 11, page 12; beginning on line 6, page 13, and ending on line 4, page 23.

4. Transcript of Hearing held on October 1, 1948, beginning on line 13, page 69 and ending on line 6, page 88.

5. Transcript of Hearing held on May 17, 1948, beginning on page 110 with the sentence commencing "The Court is content with . . ." to page 114 ending with the words "So, do not distort it into anything else."

6. Motion by St. Joe Paper Company to Vacate Order of May 18, 1948, filed on Jan. 2, 1952 (Doc. 1003).

7. Petition of St. Joe Paper Company, filed on July 30, 1948, for an accounting by Trustees and for order imposing liens for additions and betterments between July 1, 1944 and July 1, 1947.

8. Motion by St. Joe Paper Company filed Jan. 21, 1952, for Leave to Amend Petition filed on July 28 (30th) 1948 for Lien and Amended Petition (Doc. 1002).

9. Order of July 17, 1947 relating to liens (Doc. 588).

10. Order of Oct. 6, 1948 relating to liens (Doc. 705).

BLEED THROUGH

Designation by Appellees for Printing of Additional Portions of Record.

11. Order of June 29, 1950 relating to liens (Doc. 867).

12. Order of June 6, 1952, extending time within which to file and docket appeals and to file the transcript of record on appeal.

13. Designation filed by Appellees June 11, 1952 of additional matter to be included in record on appeal.

14. This designation filed by Appellees of additional portions of the record to be printed.

DATED this 17th day of June, 1952, at Jacksonville, Florida.

(BEDELL AND BEDELL, of Counsel)
(APPLETON, RICE AND PERRIN, of Counsel)
Appearing for President and Directors of The Manhattan Company and J. Bryson Aird as Successor Mortgage Trustees.

(MACFARLANE, FERGUSON, ALLISON & KELLY, of Counsel)
Appearing for appellees, F. K. Conn, Edith F. Conn, Sherman B. Forbes, Helen M. Forbes, Christine L. Holtsinger, Holtsinger Motor Company, A. E. Beyer, Nell C. Sloan and Everett E. Hennie.

(WALTON, HUBBARD, SCHROEDER, LANTAFF & ATKINS, of Counsel)
Appearing for appellees, W. G. Welbon, E. N. Claughton and A. W. Corbett.

Designation by Appellees for Printing of Additional Portions of Record.

GILES J. PATTERSON (PATTERSON, FREEMAN, RICHARDSON & WATSON, of Counsel)
JOHN R. TURNEY
Appearing for St. Joe Paper Company, appellee.

HENRY P. ADAIR
DONALD RUSSELL
CLARENCE G. ASHBY
(ADAIR, KENT, ASHBY & MCNATT, of Counsel)
Appearing for appellees, Jessie Ball duPont, et al., as Testamentary Trustees of the Trust Estate of Alfred I. duPont, Deceased.

J. TURNER BUTLER (OLIVER & DONNALLY, of Counsel)
Appearing for the appellees, S. A. Lynch, Sr., S. A. Lynch, Jr., S. A. Lynch Corp. and Ruby Russell Lynch.

BLEED THROUGH

Transcript of Proceedings.

IN THE

UNITED STATES DISTRICT COURT,

IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA,
JACKSONVILLE DIVISION.

In proceedings for the reorganization of a railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

On hearing in said cause, before his Honor, Louie W. Strum, sitting as United States District Judge, commencing at 10:00 o'clock in the forenoon, Monday, February 4th, 1952.

[2] Appearances:

SCOTT M. LOFTIN, Esquire and JOHN W. MARTIN, Esquire, Trustees.

RUSSELL L. FRINK, Esquire, Appearing on behalf of the Trustees.

JOHN B. L'ENGLE, Esquire, appearing on behalf of the Florida East Coast Railway Company.

GILES J. PATTERSON, Esquire and JOHN R. TURNEY, Esquire, Appearing on behalf of St. Joe Paper Company.

EDWARD W. BOURNE, Esquire, WILLIAM A. BOYLAN, RICHARD B. GWATHMEY, Esquire and CHARLES COOK HOWELL, Esquire, appearing for the Atlantic Coast Line Railroad Company.

SIDNEY S. ALDERMAN, Esquire, HENRY L. WALKER, Esquire, ARNOLD B. MCKINNON, Esquire, and C. C. COPP, Esquire, appearing for the Southern Railway Company.

HOWARD MACFARLANE, Esquire, appearing for F. K. Conn & others.

MILLER WALTON, Esquire, appearing for W. G. Welbon & others.

CLIFTON S. THOMSON, Esquire, and CHESTER BEDELL, Esquire, appearing for Bank of The Manhattan Company and J. Bryson Aird, Trustees, First & Refunding 5% Bonds.

J. TURNER BUTLER, Esquire, appearing on behalf of the S. A. Lynch interests.

WALTER H. BROWN JR., and GUY W. BOTTS, Esquire, appearing for Seaboard Air Line Railroad Company.

WILLARD P. SCOTT, Esquire, also appearing for S. A. Lynch interests.

H. P. ADAIR, Esquire, DONALD RUSSELL, Esquire, DAVISSON DUNLAP, Esquire and CLARENCE G. ASHBY, Esquire, appearing for the Trustees of the Alfred I. duPont Estate.

H. P. OSBORNE, Esquire, appearing for Guaranty Trust Company of New York and Arthur E. Burke, First Mortgage Trustees.

EDGAR G. CROSSMAN, Esquire, appearing for Refunding Bondholders Committee.

EDWARD J. HICKEY JR., appearing for Railway Labor Executives Association, and EDWIN C. COFFEE, Esquire, of counsel.

BLEED THROUGH

[3] The Court: Gentlemen, the matter set for hearing beginning this morning is the matter of Florida East Coast Railway Company, in Bankruptcy Reorganization, No. 4827-J. The Court will hear, as we can reach it from day to day, all pending and undisposed of matters in this Reorganization Proceedings.

The first matter to be taken up will be the present pending proposed Plan of Reorganization proposed by the Interstate Commerce Commission, and what I refer to as the Fourth Plan which was approved by the Commission, July 12, 1951 and certified to this Court and filed on October 29, 1951. I call that the Fourth Plan, and for simplicity, I suggest that we so designate it, unless there is some adequate reason to the contrary. So designate it, and I will hear argument.

What I refer to as the First Plan, is the original plan which was certified to this Court by the Interstate Commerce Commission on August 10, 1942. That is nearly ten years ago. That was a proposed plan of internal reorganization which was rejected by this Court in 1943 because it left unallocated, about seventeen million dollars in money which this Court thought should be physically allocated to definite purposes in the Plan of Reorganization. That is the First Plan.

The Second Plan was approved by the Interstate Commerce Commission on January 8, 1945 and was also a plan of internal reorganization—it was practically the same as the First—[4] there was a little difference in the capitalization, and with the previously unallocated funds designated to specific purposes so as to take up that slack and meet the Court's objections to the First Plan. That is what I call the Second Plan. That plan was recalled by the Interstate Commerce Commission before this Court had an opportunity to consider it. It was recalled by the Interstate Commerce Commission and never received the consideration of this Court.

What I refer to as the Third Plan is the so-called Atlantic Coast Line Plan which was approved by the Inter-

state Commerce Commission on April 8, 1947 and certified to this Court on March 27, 1948. That is what I refer to as the Third Plan. And that is the plan that was rejected in an opinion of this Court by Judge Sibley, in January, 1949. That is three years ago. We are just now getting around to a consideration of what I term the Fourth Plan, approved by the Interstate Commerce Commission on July 12, 1951 and certified to this Court on October 29, 1951, which, by the way, is three months and a few days ago, and it is that plan that is now up for consideration on its merits, beginning today, the question being, shall the Plan be approved or rejected.

Now, the record seems to contain a good many objections to the Plan, and motions, based on those objections, or filed in connection with them, and in order that we may systematize the argument to some extent and know just what the situation [5] is here, the Court wishes to first determine alignment of the parties here. Who is here favoring the Plan and urging its adoption. Who is here opposing the Plan and urging its rejection. I want to divide the parties into those two general classifications, if it is practical to do so, and find out what each side proposes to do in the way of testimony and argument, and how much time you think will be necessary so that I can appraise the situation generally.

And the Court would also like to know from those who favor the Plan and those who object to the Plan, what your interest is in this debtor is, both in time and amount, so that I can have the benefit of that information in appraising the general situation. Not, that a man who owns one bond, is not entitled to just as much consideration as one who owns thousands, but at the same time, it is pertinent and relevant to know whether one, who is favoring the Plan, or one who is objecting to the Plan, is the owner of a small interest in the debtor, or a large interest in the debtor, or somewhere in between there. And then, too, I want to know how many and how much, in amount of securities are represented here at

BLEED THROUGH

this hearing; whether those are here; and so, the Court will hear in argument, those representing the majority of the securities or a great deal more than the majority, or practically all, or just what. The Court wants to be advised who he is, and what his interest is, and I think, unless there is some objection, we will take [6] that matter up first, so as to get the hearing started on some kind of a systematic basis. After I determine who he is, and what your interest is, and who you are representing, and whether you favor the Plan or oppose it, then we will go back and find out how much time you would like to have; what your aspirations are in that behalf.

Now, the most important matter, I think, here, is the consideration of this Plan on its merits, and the Court will take that up first and will proceed with all matters which pertain to the question of, "Shall the pending Plan be approved or rejected". After that, there are other matters to be considered, and they will be taken up as we reach them, through the week.

Now, I had hoped to be able to consider, before this hearing is concluded, the matter of compensation to the Trustees, and Counsel, but so far as I know, this morning, we have had no report from the Interstate Commerce Commission, fixing the maximum allowances to be made under the statute—that is, in accordance with the statute—and until we receive that, I think we will not—I think it will not be practical to proceed with the matter of hearing on compensation.

Mr. Frink, has any order come down from the Interstate Commerce Commission on the matter of Compensation?

Mr. Frink: We have not been advised.

The Court: They held hearings on it on January 8th and [7] 9th, 1952, but nothing has been heard from it.

Mr. Frink: That is right.

The Court: Well, it looks doubtful, then, whether we can consider that matter. Because, we should have the Commission's order, first, for the basis of the consideration, and

therefore, if it is presented during the week, even as this hearing progresses, that would be rather short notice for time to take it up. So, it's quite probable that we will have to continue that matter and defer it until another hearing.

Then, in addition to that, there is the matter of the Miami Station. There is another motion pending here by the Florida Public Service Commission — Utilities and Public Service Commission, for the entry of summary judgment against the Railway Trustees, requiring the Trustees to comply with the Public Utilities Commission's order to erect a new station at Miami. That has been set down for hearing and hearing on that motion will follow in due course after consideration of this Plan of Reorganization.

Then, there are other incidental motions. One, to enter a lien in behalf of the 5% Mortgage Bondholders, for all capital expenditures prior to a named date in 1947. Lien orders have already been entered for all capital expenditures since that time. That motion will be taken up when we can reach it.

And, all other incidental and related matters. In other [8] words, I want to clear the deck here, as far as possible. It seems that will exclude the hearing on compensation for the reasons I have already stated. That is, will exclude it for the time being. We will get back to it when we can.

Now, let us find, first, who is here and desiring to be heard favoring the Plan and urging its adoption. Let me know who you are and what interest you have in the Florida East Coast Railway situation.

Now, first, I see a gentleman here that I recognize, of course, from past days. The Atlantic Coast Line——

Mr. Howell: Represented, if Your Honor please, by Edward W. Bourne, Esquire, of the law firm of Alexander and Green, New York City, and his associate, Mr. William A. Boylan, Esquire, and by Richard B. Gwathmey, Esquire, General Solicitor of the Atlantic Coast Line Railroad Company, of Wilmington, North Carolina, and by Charles Cook

BLEED THROUGH

Howell, of Wilmington, North Carolina, as Vice-President and General Counsel.

The Court: All right.

Mr. Howell: The interests are——

The Court: Well, now, besides your interests, which springs from a Plan supported by the Commission, you hold an unsecured indebtedness of the Florida East Coast Railway Company, aggregating how much?

Mr. Bourne: We have an assignment of unsecured indebtedness of a million, nine hundred thousand dollars.

[9] The Court: A million, nine?

Mr. Bourne: The record shows that we have a beneficial interest in that only to the extent of one half. The assignors have a reserve beneficial interest to the extent of one-half, less the cost of what we have paid for it.

The Court: A million, nine hundred?

Mr. Bourne: A million, nine hundred, and a total amount allowed under the Plan for unsecured claims is $588,000.00 of mortgage bonds and $353,000.00 of common stock including the million, nine hundred thousand——

The Court: I don't understand that. You say the total amount allowed, for what?

Mr. Bourne: That's the valuation of the unmortgaged assets, which that allotment of bonds would be, and so, under the Plan of the Bondholders, of the unsecured claims——

The Court: Oh, yes, I understand. The total valuation of five million——

Mr. Bourne: $588,000.00.

The Court: $588,000.00, yes.

Mr. Bourne: $588,000.00, of bonds, and $350,000.00 of stock.

The Court: Yes.

Mr. Bourne: That will go to holders of unsecured claims. There are other claims of one hundred forty-eight thousand, not——

The Court: Do you hold those claims?

[10] Mr. Bourne: No sir, those are miscellaneous tort claims——

The Court: I want to know what you hold now. What each one of these parties hold.

Mr. Bourne: One million, nine.

The Court: You can tell me the rest of it later. All right. That is the Atlantic Coast Line Railroad Company, to be heard in favor of the Plan.

Mr. Bourne: Yes, sir.

The Court: Now, who else is here to be heard favoring the Plan?

Mr. Crossman: If your Honor please, Herman Ulmer, from Stockton, Ulmer and Murchison, of Jacksonville, and Edgar G. Crossman, of the firm of Davis, Polk, Wardwell, Sunderland and Kiendl, both representing the First and Refunding Deposit Committee, Mr. Arthur M. Anderson, Chairman. That Committee has on deposit, $437,000——

The Court: Wait a minute. I am writing something here. The Original Deposit Committee, that is the Anderson Committee?

Mr. Crossman: Yes, sir.

The Court: What is the amount, now?

Mr. Crossman: $437,900.00, principal amount, and 196 individual depositors.

The Court: One hundred and ninety-six individual depositors? And you will favor the adoption of the Plan.

Mr. Crossman: Yes, your Honor.

[11] The Court: Now, who else is here to be heard favoring the adoption of the Plan? If approved and adopted by the Court?

. . . To which inquiry there was no response.

The Court: Well, I have heard nothing from the stockholders. I assume they are still pursuing their previous policy of neutrality and silence in the matter. Is anybody here to be heard on behalf of the stockholders?

. . . To which inquiry there was no response.

BLEED THROUGH

The Court: All right, now we will take up those who oppose the Plan and wish to be heard and what your interest is.

Now, I have a—Mr. Frink has been good enough to compile a list, a partial list of those from the records in the Clerk's office, which he has laid on my desk, here, and I think it would be simpler if I just go down this list Mr. Frink has furnished me, and then take up any additional ones— any additions to the list.

First, he has on here, the duPont Trustees. That's the St. Joe Paper Company—wait a minute. The duPont Trustees? No. duPont Trustees, that is the Trustees of the Estate, is it not?

Mr. Adair: It is, your Honor. Separate from the paper company. Mr. Patterson and I will collaborate.

The Court: The duPont Trustees, the Trustees of the Estate, they hold what?

[12] Mr. Adair: A million, nine hundred and ninety thousand of bonds, as Trustees, in addition to quite a large number of shares of common stock in the paper company. They are here as holders of a million, nine hundred and ninety odd thousand dollars——

The Court: Under my system of accounting, here, which is a very simple and systematic one, we will see what St. Joe Paper Company owns and that will take care of it all.

The next ones on the list, or, the next one on the list is the First and Refunding Mortgage Trustees, F. K. Conn, W. G. Welbon, and St. Joe Paper Company. By the way, what about the Mortgage Trustees of the First 4½% mortgage? Are they here this morning to be heard?

Mr. Osborne: We are here, your Honor.

The Court: Do you oppose or favor the Plan?

Mr. Osborne: We take no part.

The Court: You are an observer?

Mr. Osborne: Yes, sir.

Mr. Adair: I neglected to say Mr. Donald Russell, a distinguished lawyer from South Carolina is also counsel for the duPont Trustees, and, Mr. Ashby, of my firm.

The Court: All right. I am going to put down a neutral column here, too. A column for opposed, a column for approval, and a neutral column. First Mortgage Trustees, neutral.

All right. I better keep all of those in that manner. It would be simpler. All right, now I have the duPont Trustees, [13] one million, nine hundred and ninety thousand dollars.

First and Refunding Mortgage Trustees, 5% bonds, what is your position?

Mr. Clifton Thomson: Mr. Bedell, of Bedell & Bedell of Jacksonville, and myself, Clifton S. Thomson—I haven't been before you before—of Appleton, Rice & Perrin of New York City, of counsel for the Refunding Trustees of the 5% bonds, and we are in opposition of the Plan.

The Court: You want to be put down as opposing this Plan?

Mr. Thomson: We consider we represent approximately eleven million dollars face value of bondholders who have not actually participated previously.

The Court: Eleven million dollars?

Mr. Thomson: Approximately.

The Court: In what way do you hold those bonds?

Mr. Thomson: We don't hold them. It was very difficult to get hold of them. It is our position, as Trustee, and we take the position we represent them.

The Court: Eleven million dollars? First and Refunding Trustees of 5% bonds oppose the Plan as Trustees, and represent eleven million dollars, in 5% bonds.

Mr. Bourne: Your Honor, I would like to have the record show we do not concede they represent eleven million dollars of bonds.

The Court: All right. The next one I have on this list [14] is F. K. Conn, a bondholder of 5% bonds.

Mr. MacFarlane: He is represented by Howard MacFarlane of Tampa.

The Court: Do you oppose or approve?

BLEED THROUGH

Mr. MacFarlane: We are in opposition.

The Court: What is your interest?

Mr. MacFarlane: Nine hundred and seventy-eight thousand aggregate principal amount of First and Refunding Bonds.

The Court: Nine hundred and seventy-eight thousand? All right. Now, I have got F. K. Conn, et al. Who is the et al?

Mr. MacFarlane: His wife, Edith F. Conn, Dr. Sherman Forbes and his wife, Helen M. Forbes, the Holtsinger Motor Company and Mrs. Christine L. Holtsinger and E. E. Hennie, A. R. Boyer and Mrs. Nell C. Sloan.

The Court: That is a group of people acting through F. K. Conn who owns nine hundred and seventy-eight thousand?

Mr. MacFarlane: Mr. Conn is handling the matter for them but the interests are individual. The aggregate ownership is nine hundred and seventy-eight thousand principal amount.

The Court: We will put down F. K. Conn and Associates; I guess that will cover it.

W. G. Welbon. Are you going to approve or object to the Plan?

Mr. Walton: Object to it, your Honor.

The Court: W. G. Welbon and Associates?

Mr. Walton: Yes.

[15] The Court: What is your aggregate interest?

Mr. Walton: The aggregate outright ownership at this time is one million, two hundred and twenty thousand dollars principal amount of the First and Refunding Bonds.

The Court: Yes. Well, you say "outright ownership". Do you have any other interests at all, other than that?

Mr. Walton: Yes, sir, your Honor. A member of that group has an option to repurchase, under certain conditions, one million, six hundred and fifty-five thousand dollars of the bonds which he formerly owned and——

The Court: But, that option has not been exercised?

Mr. Walton: Has not been exercised yet.

The Court: I will put that down as one million, two hundred and twenty thousand dollars, then. W. G. Welbon and Associates. —of 5% bonds.

Mr. Walton: Yes.

The Court: Now the next name I have on the list is St. Joe Paper Company. I suppose St. Joe Paper Company opposes the Plan? St. Joe Paper Company?

Mr. Patterson: I am glad your Honor didn't have to ask me my position there.

Mr. Patterson: Mr. John R. Turney, of Turney & Turney, of Washington, is with me, and we are opposing the Plan, for St. Joe Paper Company.

The Court: What is your interest? What do you own?

[16] Mr. Patterson: We own $23,259,000.00 First and Refunding Bonds.

The Court: Yes. All right. Now, then, there is an objection here by W. R. Huggins, et al., seven Railway Employees at Miami, is the notation I have on here. Is anybody here representing them?

Mr. John G. Thompson: In view of the other very fine legal talent who opposes the Plan, we will just stand on the motion filed.

The Court: That is, you wish to be numbered as opposing the Plan?

Mr. John G. Thompson: Yes, sir.

The Court: W. R. Huggins (seven Railway Employees). You don't own any securities?

Mr. Thompson: No, sir.

The Court: You just object as employees?

Mr. Thompson: That's correct.

The Court: Now, the Lynch interests. Stephen A. Lynch interests. Which column do you fall in, Senator?

Senator Butler: The Lynch interests are represented by Mr. Scott, Mr. Willard P. Scott, of the law firm of Oliver and Donnally, New York City, and myself. I wasn't expecting this inquiry as to the number of bonds that we represent.

BLEED THROUGH

I haven't prepared it. I am told though, its interests own more than two million dollars. I will have to get a confirmation [17] of it.

The Court: I will have to have it more accurate, as we go along, so I will know how many of these bonds are represented.

Senator Butler: I can get that.

The Court: Will you announce that a little later in the morning?

Senator Butler: Oh, yes.

The Court: As soon as you are ready, just get up and let me know. I want to get it as soon as possible. In fact, if you will do it now I will wait. I would like to have it before we start the argument. I would like to know how much is represented.

Senator Butler: All right.

The Court: By you and your Associates, as a group.

Mr. Lynch: Well, consisting of my father and myself, we own jointly, over a million dollars, and S. A. Lynch interests owns over a million dollars of bonds, so for the purpose of this record, we show we simply own over two million dollars of bonds.

The Court: Two million dollars? Now, then, there is an objection here from the Greater Miami Traffic Association and Greater Miami Chamber of Commerce. I suppose that is on account of the allowance for the new station, as limited to two million dollars. Put them down as objectors. Greater [18] Miami Traffic Association and Chamber of Commerce.

By the way, do you want to be heard in argument—Greater Miami Traffic Association and Miami Chamber of Commerce? Is anybody here representing them? There is an objection here.

Mr. John Thompson: Counsel representing them, said he understood their part would not be heard until the latter part of the week. That he was going to check in along about Wednesday.

The Court: All right. Seaboard Airline Railway. Is anybody here to be heard for them?

Mr. Brown: Guy W. Botts, of Fleming, Jones, Scott & Botts, and Walter H. Brown, Jr., of Wilkie, Owen, Farr, Gallagher and Walton, appearing on behalf of the Seaboard Railroad.

We do not have a creditor position, nor a financial position in appearing; we appear as connecting lines, for the reasons that appear on the record. We believe that the position of the Seaboard and the public, coincide, and we appear in opposition to the proposed Plan of the Interstate Commerce Commission.

The Court: Now, the Southern Railway?

Mr. Copp: Your Honor, may I present Mr. Sidney S. Alderman, Vice-President and General Counsel of the company, who will speak for the Southern Railway?

The Court: Very well, do you approve or oppose the Plan?

[19] Mr. Alderman: We are in the position of opposition to the Plan, if your Honor please, I, myself, and Mr. Henry L. Walker and Arnold B. McKinnon, and, with our local Counsel, Osborne, Copp & Markham. The opposition is identical to that of the Seaboard. We are not security holders or creditors. We appear in opposition to the Plan. We oppose the Plan on the ground we think the Commission had no legal power to approve the aforesaid merger and that the decision, even assuming the power, is contrary to the public interests.

The Court: Now, on that first proposition, you are going to run into a little trouble from the Fifth Circuit Court on that opinion, and on the second, you will run into trouble with the statute.

Mr. Alderman: We will run into trouble with both of them. We are waiting on a decision of the Supreme Court that has not yet been passed on.

Mr. Thomson: As to our representation, we do not at the moment contemplate offering the evidence——

BLEED THROUGH

The Court: I will get back to that later. I will come back to that.

The next one I have is Railway Labor Executives; does anybody represent them?

Mr. Hickey: Yes, your Honor, Edward J. Hickey of Washington. D. C. and Edwin C. Coffee of the local bar.

The Court: You are not a creditor or security holder, [20] are you?

Mr. Hickey: We own no securities. We represent the majority of the debtor employees, and we are appearing in opposition to the Plan.

The Court: You represent the debtor's employees?

Mr. Hickey: The great majority of them.

The Court: Well, let us see what this wire is here. I have a lot—I say "a lot"—quite a number of individual letters that I have received from time to time from people, mostly non-security holders, that I have sent to the Clerk's office, and they are in this file, so you may read it if you are interested in it. I have said—I have sent them all to the Clerk. Here is a telegram that just came in this morning. Well, maybe you can tell me. This is signed by William S. Townsend, International President, United Transport Service Employees. Now, who is that?

Mr. Hickey: To the best of my knowledge, your Honor, Townsend represents a colored laborer organization. I do not know him personally. He is not of the organization comprising the Railway Employees Association and we do not appear on his behalf.

The Court: That is, the colored firemen?

Mr. Hickey: Yes, sir.

The Court: Well, so that everybody will know what is in this telegram, I will have the Clerk read it. Mr. Clerk, [21] read this telegram so everybody can hear it, including me.

. . . The telegram was read by the Clerk, being in words and figures following:

"In reference to Reorganization of Florida East Coast Railway and proposed merger of Florida East Coast Railway and Atlantic Coast Line, the United Transport Service Employees, an unincorporated railway laborer organization, desires to register its protest against any reorganization plans for the Florida East Coast Railway which contemplates a merger with the Atlantic Coast Line Railroad.

"Our interest in this matter is primarily due to the fact that our organization, for the purposes of the Railway Labor Act, represent the train porters and red caps employed by the Florida East Coast Railway and hold contracts therefor with the carrier.

"This protest is motivated by desire on the part of the United Transport Service Employees to safeguard the public interests as well as the best interests of our members on the Florida East Coast property. We do not believe a merger of the Florida East Coast and the Atlantic Coast Line to be in the public interests, and we realize that a strong possibility exists that the rights of both carrier and employees may be endangered if this Court, by its ruling, makes such a merger possible.

"Please accept this as our earnest desire that its award [22] contain the provisions that the rights of all employees of both carriers be respected.

"Signed, William S. Townsend, International President, United Transport Service Employees."

The Court: Well, now that we have all heard the telegram read, I suppose it's obvious I made my inquiry to you? I had not read it when I came in this morning.

Then I have on this list, filing objections, F. K. Conn, W. G. Welbon, et al. Well, those were additional objections. I have already had them once. That is an additional objection. A supplemental objection.

BLEED THROUGH

Senator Butler: Since Mr. Lynch made his announcement a few minutes ago as to the ownership of bonds, he advises me he has six hundred and seventy-two thousand more bonds which he represents.

Mr. Lynch: The figures I gave you before, were the Lynch family only. In addition to that we are representing the Estate of Julian S. Eaton, holding five hundred forty-seven thousand of bonds, and in addition to that, Ruby Russell Lynch, of Jacksonville, six hundred and seventy-two thousand.

The Court: That makes a grand total of two million, six hundred seventy-two thousand.

Mr. Lynch: Yes.

The Court: Now, there are additional objections by St. Joe Paper Company. And, that seems to be all the objections— [23] In fact, it is all the objections that the Clerk has furnished me in his file up to this morning.

Are there any other persons present now who have filed objections and who wish to be heard in opposition to the Plan, or are there any other persons who wish to be heard in favor of the Plan, or, its adoption? Is there anybody else now that I haven't included in this list?

. . . To which inquiry there was no response.

The Court: Now, I have not inquired whether there are any First Mortgage 4½% Mortgage Bondholders as distinguished from Trustees of that interest, who are here and want to be heard. Either for or against this Plan. Any First Mortgage Bondholders?

. . . .To which inquiry there was no response.

The Court: All right. Getting away from the Bondholders, now, and those who are interested in the Miami station, is there any other person who wishes to be heard during this hearing, either in favor of the Plan or against

it? If so, make yourselves known now, so I will know you are here and what your interest is.

. . . To which inquiry there was no response.

The Court: Well, that seems to cover the list. Now, I will just put these figures up hurriedly and roughly, here, to see how many of the 5% bonds are represented. That's a little over forty-one million dollars that I have. That's a rough [24] computation. A little over forty-one million dollars out of forty-five.

Mr. Bourne: Could I suggest to your Honor that Mr. Thomson, I believe, I understood him to say, that he represented all those were not otherwise represented. That is what he gave the eleven million figure for. The actual amount is approximately thirty million, five hundred thousand dollars.

The Court: Well, if we take off his eleven million, that leaves thirty.

Mr. Bourne: Yes, sir.

The Court: Well, we will see as we go along, whether he is entitled to claim representation of the other eleven million dollars. That will be taken up for discussion.

It seems to be my recollection that a hearing before Judge Sibley—of course, I have read that—at that hearing something was said about ninety-eight percent of the 5% Bonds being represented at that hearing.

Mr. Thomson: The only bonds that we have that were in favor of the Third or Fourth Plan, were the five hundred and some odd thousand dollars of bonds which were represented by us.

Mr. Bourne: I hope the witness, or the Mortgage Trustee, will get on the stand and be examined on that subject.

The Court: We will see as we go along, how good the title of the parties is, as we progress.

BLEED THROUGH

[25] Now, then, those who are objecting to this Plan, carry the burden. The burden is on the objectors, therefore, and therefore I think the Court should accord them the opening and closing in testimony and in argument. Within reasonable bounds, however, I am going to hear all that everybody wants to say, and if you will conform yourself to that subject, and, helping the Court. You are—we are not going to be technical about this hearing, but generally speaking, the objectors will have the opening and closing, as that carries the burden.

Now, we will go down this list and find out what your aspirations are about the introduction of evidence and how long that is going to take, and then how much time you want to argue it so I can appraise that situation and I will just go down this list.

I will take the objectors first, because the Atlantic Coast Line Railroad Company is a better judge of its position, I suppose, after you have heard that.

The duPont Trustees, how long for evidence and how long for argument.

Mr. Adair: I should say, your Honor, not to exceed two hours for evidence, and we would like an hour and a half for argument, between Mr. Russell and myself.

The Court: Two hours evidence, one and one half hours argument.

The 5% Mortgage Bond Trustees? How long for evidence [26] and how long for argument?

Mr. Thomson: We do not propose to put any witnesses on the stand and I would like half an hour for argument.

The Court: Half an hour?

Mr. Thomson: Yes.

The Court: F. K. Conn and Associates.

Mr. Macfarlane: Half an hour.

The Court: For argument?

Mr. Macfarlane: Yes.

The Court: How long for evidence?

Mr. Macfarlane: At the moment, we know of none that we will submit.

The Court: By the way, right now, while it occurs to me, I suppose you gentlemen have all duly observed the statement in the order that I made, setting this hearing, that all briefs are to be submitted at the conclusion of the hearing. I am calling that to your attention again.

Mr. Bourne: Does that mean that your Honor will not accept briefs after the conclusion of the hearing?

The Court: Generally, it does. If you want to send me one later and I get around to it, before I decide the case, I will look at it.

Mr. Bourne: We have briefs ready, now, but I wondered if we would be permitted to present——

The Court: I am always willing to accept help from any [27] legitimate source. If there is anything you want to submit, later, and before I decide the case, all right, but I don't promise you a thing after the conclusion of this argument—that is, this hearing; this entire hearing.

Now, W. G. Welbon and Associates:

Mr. Walton: Your Honor, if we do introduce evidence, which has not yet been decided, it will take about half an hour. I should like forty-five minutes to argue it.

The Court: St. Joe Paper Company?

Mr. Patterson: If your Honor please, the direct evidence of our witnesses will not consume over three to four hours, and in the matter of time for the argument, Mr. Turney and I would like to have two hours.

The Court: Two hours?

Mr. Patterson: Yes.

The Court: For both of you?

Mr. Patterson: Yes.

The Court: W. R. Huggins (seven Railway Employees), I believe they are not present.

Mr. Thompson: We will ask for one hour's time, your Honor.

BLEED THROUGH

The Court: Now, the Lynch interests:

Senator Butler: We will recall a witness that testified at a previous hearing before Judge Sibley. I imagine an hour and a half will be ample time. For the present. And I would [28] like to have an hour and a half to cover that, in argument.

The Court: All right. Now, the Greater Miami Traffic Association and Chamber of Commerce.

. . . To which inquiry there was no response.

The Court: We will pass them. Now, Seaboard Air Line.

Mr. Brown: We do not request any time for evidence, your Honor. I would like to ask for thirty minutes for argument.

The Court: All right, Southern Railway.

Mr. Alderman: We do not contemplate introducing any evidence, your Honor. We have a joint plea with the Seaboard, and my request for argument, my allotment, I ask for fifteen minutes for argument.

The Court: Fifteen minutes.

Mr. Alderman: If Mr. Brown and I can, we will cover it in an hour. Or, half an hour.

The Court: I think an hour for the two of you would not be unreasonable.

Mr. Alderman: Thanks very much, that is nice of you, your Honor.

The Court: Railway Labor Executives Association.

Mr. Hickey: Your Honor, we will present no testimony. We have no evidence. We think that fifteen minutes will be sufficient for argument.

The Court: There is nobody here representing this United Transport Service, the negro firemen and red caps. [29] Well, now, for the Atlantic Coast Line, you have heard these requests. How much time do you anticipate for evidence and how much time for argument?

Mr. Bourne: Our evidence as presently contemplated will not take more than two hours on direct at the outside, and I would think, it might be considerably less.

We have been thinking in terms of eight hours for the argument on the theory that our job is to discuss the very full record before the Interstate Commerce Commission, which has been certified to this Court, and to answer the arguments made by the objections to the Plan. In other words, we consider this a matter for argument based upon the record made before the Commission rather than for the development of further evidence here today.

The Court: If I gave you eight hours, that, in effect, equalizes all requests made by your opponents. I just added it up roughly.

Mr. Bourne: I think that seems to us to be a fair assignment, because I don't believe——

The Court: You have a pretty good advocate on your side to start out with, haven't you?

Mr. Bourne: In the Interstate Commerce Commission?

The Court: Yes.

Mr. Bourne: I think we have. And I believe we have in the past asked except before the Commission and been allowed except by the [30] Commission, an equal division of time as between the two sides. Surely, we would not take more than was suitable. I merely wanted to suggest the eight hours.

The Court: You want an option on eight hours?

Mr. Bourne: Yes.

The Court: I think all these requests of the objectors are within reason and will be granted. And I think I should not cut you off without an equal amount of time on your side. Although, as you said, the Interstate Commerce Commission has you in the happy position, here, who does not have the burden—not the burden—in this case. We will start out with that in view.

BLEED THROUGH

Mr. Bourne: Yes, thank you.

The Court: A tentative allowance of eight hours. We have to wind this thing up some time.

Mr. Bourne: We will do our best not to take more time than required.

The Court: The Court of Appeals begins a session in this Courtroom the first Monday in March.

Now, speaking of this evidence——

Mr. Crossman: Your Honor——

The Court: Pardon me, Mr. Crossman. How much time do you want? What you want will be taken off of Mr. Bourne's allowance, too.

Mr. Crossman: I will probably not need more than an hour [31] on evidence and direct examination of one witness.

The Court: One witness.

Mr. Crossman: I think as to argument, I could certainly do it within half an hour. I could probably do it.

The Court: Two hours of evidence. Tell me again how much time for that evidence?

Mr. Crossman: I should think an hour, your Honor, would be enough on direct. It's a little hard to compute it accurately, but I should think an hour.

The Court: I added you and the Atlantic Coast Line up there in one group together, and didn't associate you in the matter of argument.

The Court: Well, now, speaking very generally about this evidence, I want you all to know at the beginning of the hearing so that you can act accordingly, that I will be interested in evidence as we go along as to the value of the so-called package of securities provided in the Interstate Commerce Commission plan, to be given to the 5% Bondholders.

In other words, I want to see what equitable values there are. How much of a *quid pro quo,* in dollars—translated

into dollars and market value, the Commission Plan proposes to give these 5% Bondholders. And, that will necessarily involve, I suppose, the value of the Atlantic Coast Line stock, of which they are going to get some. Because, at the moment, I haven't the slightest idea of what Atlantic Coast Line stock should be [32] valued at. I know, and probably everybody else knows it's been rising lately, and selling from eighty-three, or thereabouts, but how long that has been so, or how long it will be so, or just what its value will be over a reasonable period of time, I am not advised. Or, is it eighty-three? How much is it? You ought to know.

Mr. Bourne: Sir?

The Court: What is Atlantic Coast Line stock quoted at now?

Mr. Bourne: The last quotation I saw was eighty-five.

The Court: I didn't look at it recently, or, I don't look at it often, but, I have seen it.

Well, at least I want to be perfectly frank with you and say that I will be interested in the value of the Atlantic Coast Line stock, what it is quoted for on the market, and what it can be sold for. Not only what the asking price is, but the buying price, and what is being paid for it. And any other element of value which will enable me to properly appraise the values of the so-called package security, I believe it is what it is called, offered by the Interstate Commerce Commission in the Plan, to the 5% Bondholders in one thousand dollar bonds.

And I will also be interested in knowing the same thing about the value of the package of securities proposed by the St. Joe Paper Company, in a Plan that it offered before the Interstate Commerce Commission, to see just what the relative [33] values of them, for those two packages of securities are, and how they both apply, translated into terms of dollars, of the value of the property to which they are to supersede, and for which they are to be received in

BLEED THROUGH

addition under the Coast Line Plan and under the St. Joe Paper Company proposed Plan. Both.

So, while I don't want to unduly prolong this argument or hearing—I want to get along and I want you to feel you have adequate time to be used in a helpful way, but not too long a time in which to advise the Court of your views. I don't want you to feel hampered, but I don't want you to feel we are going to spend the entire summer right here listening. We will take ample time for both evidence and arguments.

Mr. Adair: Your Honor, may I inquire whether in mentioning the values that you intend to exclude any hearing upon whether there is evidence to sustain this finding of incompatibility of duPont control——

The Court: Evidence of what?

Mr. Adair: Evidence of incompatibility of duPont control. It was alleged before the Interstate Commerce Commission that the duPont Trustees, who sit in the rear, and their proposal were immoral. That is precisely the word.

Now, we propose, your Honor, to demonstrate, and, from an examination of the record, that there is no material difference to warrant any such findings that control by the duPont Trustees is incompatible——

[34] The Court: Well, in the first place, the duPont Trustees are not on trial here. They are not on trial.

Mr. Adair: Well, they were convicted by the Interstate Commerce Commission, Your Honor. They were——

Mr. Bourne: Now,——

Mr. Adair: Wait a minute. They were convicted in that, and the Interstate Commerce Commission says that it is incompatible with the public interest for the St. Joe Paper Company or any duPont interests to control the property of the Florida East Coast Railway, the debtor.

The Court: Well, there is a contrary hearing of the Interstate Commerce Commission, also, isn't there?

Mr. Adair: That is right, Your Honor, and——

The Court: Don't that sort of neutralize each other?

Mr. Adair: They have spoken the last words that have been spoken and I want to be sure——

The Court: You know as well as I know, there are certain features of this—the determination of certain matters have been submitted, by Congress, to the exclusive determination by the Interstate Commerce Commission, and the Court does not have the power to reverse that. I will hear you as we go along, and if there's any objection I will determine whether it will be admitted or not.

There is a very serious question whether or not this Court is concerned at all with the matter of the public interests. [35] That is a very serious question. Whether or not that has not been exclusively committed to the Interstate Commerce Commission. Whether you like it or not is another matter. That may be where it is. But, I will hear you. You are entitled to speak to the contrary here.

Mr. Adair: Your Honor, there was never an administrative body created, even in these democratic days, that has a right to make findings in the absence of material evidence to support those findings of fact. This last week——

The Court: Wait a minute. Let us see if we understand each other. Is it that you do not deny that this power has been vested in the Interstate Commerce Commission, but you do assert they acted without evidence to support their findings?

Mr. Adair: That is right, Your Honor. We say the power granted the Interstate Commerce Commission is very narrow and has to do in reality with financial evidence, but we say even and above and beyond that, that there is not any evidence, anything substantial, from the evidence in this case, seventy-five hundred pages or more of record, and over five hundred exhibits to warrant the finding that the control of the debtor's property by St. Joe Paper Company, as being incompatible with public interests.

BLEED THROUGH

The Court: I think you are entitled to be heard on that, and then we will see where it takes it. I don't want to cut anybody off without a hearing on any material legitimate sub- [36] ject. We will see what that is and see what can be done about it before we start the hearing.

I note the presence here of the Railway Trustees. Senator Loftin and Governor Martin and their counsel. Do you want to make any report or have you anything to say to the Court and parties, before we actually take up the hearing?

Mr. Frink: The Trustees have nothing to report.

The Court: While I think of it, Gentlemen, generally speaking, the hours of this hearing will be ten o'clock in the morning to twelve-thirty noon, two o'clock p. m. to four-thirty p. m. Those will generally be the hours, in the absence of an announcement to the contrary. Ten to twelve-thirty; two to four-thirty.

Now, does anyone else have anything to say, any suggestions to make, or do you want to say anything to the Court primarily, not by way of argument, but by way of information, any suggestions before I actually take up the presentation of the evidence?

Mr. Bourne: I would like to ask a technical question, your Honor. The Board of Directors and Stockholders of the Atlantic Coast Line Railroad Company, formally accepted the Plan. Have taken the necessary action under the Interstate Commerce Commission to make it binding.

We have filed in the Clerk's office, and served on all counsel, a docket containing all of the papers. The question I [37] want to ask, is whether that ought to also be introduced in evidence or whether, being on file here, I can consider that properly before your Honor?

The Court: Have you filed that in the record?

Mr. Bourne: Yes.

The Court: This is the action of the Stockholders and Board of Directors of the Atlantic Coast Line Railroad Company?

Mr. Bourne: Yes.

The Court: It formally accepts this Plan proposed by the Interstate Commerce Commission?

Mr. Bourne: Yes, sir. I just want to be sure the formal record is complete.

The Court: Is it burdensome or bulky?

Mr. Bourne: No, sir, it can be introduced in evidence as well.

The Court: Put it in evidence and then you won't have to worry about it.

Mr. Bourne: Shall I do it now?

The Court: No, the objectors will introduce their evidence first. When you start your evidence I will try to remind you to introduce it.

Now, does anyone else have any suggestion or information of an informal nature to state before we start?

. . . To which inquiry there was no response.

[38] The Court: All right, now, I will hear the testimony of the objectors to this Plan. Arrange the order of witnesses amongst yourselves. You may proceed. All right, bring your first witness.

Senator Butler: This witness heretofore testified at the hearing before Judge Sibley. He testified as an expert. I don't suppose it's necessary to re-swear him.

The Court: No, this is the same case. No need to swear him.

Senator Butler: Your Honor, this witness qualified as an expert before Judge Sibley, but Your Honor did not preside over that trial and I thought I would ask him a few questions as to his qualifications.

The Court: Just touch the highlights of it.

BLEED THROUGH

William A. Gordon—Direct.

[39] WILLIAM A. GORDON, having been produced and first duly sworn as a witness herein, thereupon testified as follows:

Direct examination by Mr. Butler:

Q. What is your name? A. William A. Gordon.

Q. What is your business, Mr. Gordon? A. I am a partner in the consulting engineering firm of Coverdale and Colpitts, New York City.

Q. What are your educational qualifications? A. I was graduated from Harvard in 1916.

Q. Will you state to the Court your abilities, particularly with reference to railroad reorganizations? A. I have been in railroad work practically all of my life, starting during summers while I was in college. With specific reference to railroad reorganizations, I have taken part in approximately a dozen railroad reorganizations. I might mention some of those: The Chicago and Northwestern, Soo Line, Central of Georgia, Rock Island, Missouri Pacific, Central Railroad of New Jersey, St. Louis and San Francisco, Wisconsin Central, Long Island, and, of course, the Florida East Coast, which I have testified in several times.

The Court: Let me interrupt here while I think of it. I want to mention again to counsel, in making your arguments, and in listing your testimony, unless you have some other [40] plan, refer to Plans 1, 2 and 3, as I outlined them earlier this morning; and with reference to the plan now under consideration, we will call it the Number 4 Plan. That will simplify and define the term so that everybody will understand the difference. This will be the Number 4 Plan, and the Plan before Judge Sibley, the Third Plan, and then we have these other two prior plans. Go ahead.

By Mr. Butler:

Q. Have you made special studies of the factors that enter into traffic and revenue and capitalization possibilities of railroads? A. Yes, sir.

Q. Have you made such studies, as I believe you have, which apply to the Florida East Coast Railway? A. I have.

Q. Have you, as applied to the Florida East Coast Railway, made special studies of the factors that, in your opinion, affect traffic, revenues, and value of the road? A. Yes, sir.

Q. By whom have you been employed for this purpose? A. By the S. A. Lynch Corporation.

Q. Have you been directed by your employer to bring to the attention of the Court all factors affecting this reorganization proceeding, whether the factors are favorable to your client or unfavorable to your client? A. That is correct, although I would prefer to limit it to [41] the particular tasks that were assigned to me. My instructions were to bring up to date the exhibits which I presented at the January, 1949 hearings in this Court. There were one or two other specific requests; for example, I was asked to divide the cash expenditures for additions and betterments into two periods, instead of showing them for one period. Also, I was requested to make further studies as to the proper adjustment to be made for the normalization of expenses in connection with the rail laying programs on the Florida East Coast.

There may be one or two other minor items, but, generally speaking, my assignment here was to bring up to date the exhibits introduced at the 1949 hearings.

Q. And, in the 1949 hearings before Judge Sibley you offered in evidence certain exhibits that reflected your studies? A. Yes, sir.

Q. And, since the hearing before Judge Sibley, have you made further studies of the traffic and revenue possibilities of the Florida East Coast Railway? A. Yes, sir.

Q. Since testifying before Judge Sibley, have you made further analyses and comparisons of the economic situations generally served by the Florida East Coast Railway with respect to the agricultural, the consumer markets, business

BLEED THROUGH

and industrial conditions, and general growth factors, and so [42] forth? A. I have.

Q. And you have undertaken to bring those exhibits that were offered at the hearings before Judge Sibley, down to date; is that correct? A. That is correct.

Q. Now, Mr. Gordon, take your first exhibit— Take your first exhibit, and, if you don't mind, will you read the title of that exhibit? A. Florida East Coast Railway Company, cash expenditures for additions and betterments and accompanying net charges to operating expenses, 1941 to 1951, inclusive.

Q. Now, what is the difference between that exhibit and the related exhibit offered at the last hearing as Exhibit 1 of the Lynch Interests? A. The exhibit, generally, is prepared in the same form as Exhibit, Lynch Exhibit 1, in the 1949 hearings. There is one additional item on the new exhibit which is called to the attention of the Court, which relates to some small miscellaneous additions and betterments which took place subsequent to 1948.

Q. Now, then— A. (Continuing) Otherwise, it is exactly in the same form except that it is now brought down to the close of 1951.

Q. Now, take that exhibit and just go across the board with it, and explain it to the Judge. Take, first, the caption general additions and betterments, 1951, additions and better- [43] ments, $5,271,777. Just go ahead and explain the purpose of the exhibit? A. Well, the exhibit shows a separation of the cash expenditures for additions and betterments during this eleven year period, separately, by main classifications. First, general additions and betterments, which caption includes the ordinary additions and betterments that are being made from month to month on any railroad. During this eleven year period, you will note that over five million dollars were spent on such projects, chargeable to investment account. In addition to that, and in connection with such additions and betterments work, a

total of $813,000 was chargeable to operating expenses, making a total of over six million dollars in that category.

Q. Why is it you included something for operating expenses in your charges for additions and betterments? Why is that? A. The principal reason for that is that these particular operating expenses are part and parcel of the improvement work that is being done and that would not be incurred, except for the fact that those projects are being made—I think probably the best example of that is the rail program, which you will note is the fourth item and there you notice that there was a total of eight million nine hundred and four thousand dollars, odd, spent on the——

The Court: That is three times the amount of the material itself. Why is that?

[44] A. That is brought about by the Interstate Commerce Commission Accounting Rules. The Florida East Coast main line was formerly laid with ninety pound rail, for the most part. During this period of approximately ten years, when the main line was being relaid, the Debtor installed heavier rail, one hundred and twelve or one hundred and fifteen pound rail. If they had re-laid that railroad with ninety pound rail, such as was in there before, that was worn out, or worn so badly it was no longer safe for main line operation, if they had re-laid that with the same weight of rail, there would have been no charge to additions and betterments. It would have been considered a replacement, and all would have been charged to operating expense. However, they didn't do that. They laid it with heavier rail, and the difference in the weight of the rail, in other words, the extra twenty-two or twenty-five pounds of the new weight of rail, the cost of that rail is charged to the investment account. But, the balance of that, the equivalent of the ninety pounds is charged to operating expenses. But it is all part and parcel of the improvement program, of putting in a new main line, really.

BLEED THROUGH

By Mr. Butler:

Q. Now, Mr. Gordon, while that is the bookkeeping of the situation, as a matter of fact, doesn't that new rail add to the permanent value of the road? [45] A. Well, it certainly puts the main line of the Florida East Coast in much better shape to handle the traffic, and the high speed passenger trains, and results in improvement in operation. For example, if they hadn't done that, they would have had to run their trains slower, and would probably have had a lot of slow orders on certain sections of the track, and would have had a lot of trouble with their rails, and all that sort of thing.

Q. And, is it a fact that while that column totaling $7,000,865 is a matter of bookkeeping, and charged to operation, that, as a practical proposition, all, or a great portion of it, permanently benefited the road? A. Why, I think that is a fair statement. It is part and parcel of the improvement program. That is the way I would express it.

Q. Well, now, take the next column, across the Board, with the next item, new equipment. Explain that to the Court, if you will, please? A. Well, that represents the purchase of Diesel locomotives and new streamlined passenger cars, and some freight cars during this period. And, you will note there that that is all charged to the capital account. That aggregates approximately eight and one-half million dollars. We have already mentioned the rail program, and the other items are relatively minor, but the aggregate of the—of [46] all expenditures is $17,584,000.00, in round figures, chargeable to capital account, and approximately seven million dollars, chargeable to operating expense—a total of about twenty-four and a half million dollars.

In addition to that, you will note that in the footnotes there are some other amounts which were actually paid out during this period. For example, there was an additional

amount of $1,296,000 representing payments on equipment purchased prior to 1941, but those payments were actually made during this period.

A further addition represents funds advanced to the Jacksonville Terminal Company, of $81,225.00; part of that as payment on new Diesel locomotives acquired by the Jacksonville Terminal Company, and the balance as additional working capital. I might say that the Jacksonville Terminal Company is partially owned by the Florida East Coast. So that the total cash expenditures for this period, from 1941 to 1951, are approximately twenty-six million dollars, of which seven million dollars is chargeable to operating expense.

Q. Now, regarding, in the first item, general additions and betterments on this statement, the figures for 1951 are not quite complete. This statement carries such figures only through October 31, 1951. A. Yes, sir.

Q. And that column of $7,000,865.00, while charged to [47] operation, as a matter of fact was largely expenditures that permanently benefited the road? A. I think that is correct.

Mr. Butler: We offer this exhibit in evidence, your Honor, and, for the sake of convenience, as it is a very closely related exhibit to the one that was offered in evidence at the previous hearing, which was marked Lynch Exhibit Number 1, I would like to have this one marked 1-A, if it is satisfactory, please.

The Court: Very well.

The Witness: I would like to point out there is a second exhibit——

Mr. Butler: That is correct. This is an extremely technical subject matter, as to which I don't claim to be an expert at all, and I haven't any special knowledge that will throw any light on this thing——

The Witness: May I suggest that there are two pages to this exhibit.

BLEED THROUGH

Mr. Butler: Yes. I had forgotten about that.

The Witness: Up to this point, I have been speaking about page 1 of Exhibit 1-A.

By Mr. Butler:

Q. All right. Now, take up page 2, if you don't mind, and explain that. A. Page 2 was prepared in exactly the same manner, and shows the same classifications as page 1, except that the figures [48] are shown, first, for the period from 1941 to 1945, inclusive, and, second, for the period 1946 to 1951, inclusive.

The Court: What is the significance of the cleavage—of 1946 as the line of cleavage. Is that when the Third Plan was proposed by the I. C. C.? Is that when they started making those writ orders?

The Witness: I think that is correct. There were two reasons.

The Court: What was the first reason?

The Witness: One was that 1946 was really the first post-war year, and we felt that the significance of what had happened after the end of the war when the traffic, of course, was unusually heavy,—that the significance of that period was much greater.

The Court: What was the other reason?

The Witness: And the other reason was that counsel asked me to make the separation there.

Mr. Butler: We were trying to show the difference, as I understand it, between the war years and the subsequent years.

The Court: Well, this division has no direct reference to the time as to which I started making those writ orders; is that correct? I started the writ orders in 1947.

Mr. Butler: Yes, sir.

The Court: As soon as the Third Plan was proposed, I started giving five per cent on the liens.

Mr. Butler: That is correct.

[49] The Court: July, 1947.

Mr. Butler: We have a later exhibit that will cover that situation, your Honor.

The Court: All right.

By Mr. Butler:

Q. Now, go ahead— A. I hadn't quite finished.

Q. Go ahead. A. I think it is quite significant to note that during the postwar years, a much larger proportion of the cash expenditures for additions and betterments took place during this latter period. Over sixty per cent of the total cash expenditures were made during the period from 1946 to 1951.

Q. Have you any further comments on that Exhibit, Mr. Gordon? A. I believe not.

Mr. Butler: We offer the exhibit in evidence, your Honor, and we would like to have it identified as S. A. Lynch——

The Court: 1-A.

Mr. Butler: —Exhibit 1-A.

The Court: All right.

. . . The instrument last above referred to was received and filed in evidence and marked S. A. Lynch Exhibit 1-A.

By Mr. Butler:

Q. Now, Mr. Gordon, go to your next exhibit and read the [50] title of it, please, sir. A. Revenue tonnage comparisons, F. E. C. Railway *vs.* U. S., Southern Region, Florida, and competing railroads, 1940 and 1950.

Q. Now, explain the reasons for those classifications. Go ahead; go across the board with it, and show what your classifications are, and why? A. This exhibit is the first of four exhibits which show the competitive traffic situation.

BLEED THROUGH

The Court: What do those three zeros indicate. You have eliminated the three zeros. They should be added to the figures?

The Witness: That is correct, your Honor.

The Court: All right.

The Witness: These exhibits relate to the competitive position of the Florida East Coast Railway with other railways operating in the same general territory, together with a comparison of what has happened on all Class I railroads in the United States.

The first exhibit is divided into three general sections; the first section showing a comparison of the tonnage originating on line. In other words, that is traffic which originates on the railroad shown. The figures are shown for 1940 and also for 1950, and you will note——

Q. (Interposing) Why did you take those two years, Mr. [51] Gordon? A. Well, 1950 was taken because it is the latest year for which figures are available. 1940 was the year used in the exhibits introduced in the January, 1949, hearings, and that was selected at that time because at the time the Commission made the First Plan in 1942, they relied on evidence introduced at the hearings before them in 1941. That evidence, in turn, was based largely on the results for the year 1940, which was the latest year available at the time of those hearings before the Interstate Commerce Commission, and we have, therefore, used that year as being reasonably representative of the situation; the pre-war situation. Then, we have, as I said, the 1950, the latest year available showing the post-war situation. You will note that on tonnage originating on line, that the Florida East Coast has had a much greater increase in such tonnage than either of the other railroads shown, or any of the groups of railroads shown.

By Mr. Butler:

Q. Now, you are talking about tonnage originating on the line; is that right? A. That is right.

Q. Now, in percentages— Comment on the percentages, if you don't mind. A. Well, I just did, without reading them. I think they are self explanatory.

The Court: I have looked at them. I have seen them. I [52] can see those figures.

Mr. Butler: All right.

The Witness: The second block of figures on the exhibit shows the tonnage terminated on line, and there, again, you will note that the figures show that the Florida East Coast increased one hundred and two per cent from 1940, although they didn't do quite as well as the Seaboard Air Line or as the State of Florida as a whole; the Seaboard Air Line being—the Seaboard Air Line percentage being one hundred and three, and the State of Florida being one hundred and thirty-two percent; but, they were very much better than the Atlantic Coast Line; much better than the Southern Region as a whole, and much better than on Class I roads in the United States.

By Mr. Butler:

Q. All right, go—If you are through with that, we will take up the third one. A. The third block shows the total tonnage carried, and that is not just a totaling of the previous two blocks, but involves all revenue tonnage carried. Of course, every railroad, or practically every railroad has some tonnage that it receives from connections and delivers to other connections, which it doesn't either originate or terminate. The Florida East Coast doesn't have very much of that traffic, but they do have some traffic which is local to their line, which originates on their line and also terminates on line. Well, this last

BLEED THROUGH

figure would eliminate any duplications in that traffic, and would [53] also include any overhead traffic; but it represents all of the tonnage carried, and in that comparison, you will note that the Florida East Coast had a very much greater percentage increase than any of the other railroads, or groups of railroads.

Q. Now, have you any further comments on that exhibit, Mr. Gordon? A. No, sir.

The Court: That will be 2-A.

Mr. Butler: I would like to have that marked Exhibit 2-A, your Honor, and we offer it in evidence.

The Court: All right.

. . . The instrument last above referred to was received and filed in evidence and marked S. A. Lynch Exhibit Number 2-A.

The Witness: Oh, may I say that this exhibit is prepared in exactly the same form as Exhibit 2?

Mr. Butler: Oh, yes.

The Witness: With the exception that the year 1950 has been substituted for the year 1947.

Mr. Butler: All right. Do any of you gentlemen want to ask any questions. If so, you may do so. I asume there are no questions.

By Mr. Butler:

Q. Now, read the title to your next exhibit, Mr. Gordon? A. Freight revenue comparisons, 1940 and 1950.

Q. All right, sir. Comment on those percentages, if you [54] don't mind. A. This is similar to Exhibit 2-A, except that we are here talking about dollars of freight revenue, rather than tonnage of freight carried. Here, you will note that the largest percentage of increase between 1940 and 1950 is shown by the Seaboard Air Line, which had an increase of 201.1 percent. The next largest increase is shown by the Florida East Coast with 175.1 per cent.

The other figures, I think, are self-explanatory. The exhibit is similar to Exhibit 3, introduced in the 1949 hearings, except that the year 1950 has been substituted for the year 1947.

Q. Have you any further comments on this exhibit? A. No, sir.

Mr. Butler: We offer in evidence as an exhibit of the Lynch interests, 3-A.

The Court: All right.

. . . The instrument last above referred to was received and filed in evidence and marked S. A. Lynch Interests Exhibit Number 3-A.

By Mr. Butler:

Q. Read the title to the next exhibit, Mr. Gordon, please. A. Passenger revenue comparisons, 1940 and 1950.

Q. Now, explain the exhibit. A. The exhibit shows a comparison of the passenger revenue obtained by each of the railways shown and by the Southern Region and all Class I railroads in 1940 and 1950, [55] together with the percentage increase for each item. The Atlantic Coast Line had a larger percentage increase in passenger business than any of the other railroads or groups of railroads shown. It shows that the Florida East Coast had a larger percentage increase than any of the other railways shown, but a smaller percentage increase than the Southern Region, as a whole.

The exhibit is similar to Exhibit 4 introduced in the 1949 hearings except that the year 1950 has been substituted for the year 1947.

By Mr. Butler:

Q. Have you any further comments? A. No, sir.

Mr. Butler: We offer the exhibit in evidence and ask to have it marked Exhibit 4-A.

BLEED THROUGH

The Court: All right.

. . . The instrument last above referred to was received and filed in evidence and marked S. A. Lynch Interests Exhibit No. 4-A.

By Mr. Butler:

Q. Take up your next exhibit and read the title of it, please? A. Railway operating revenue comparisons, 1940 and 1950.

Q. Explain about the thousands omitted there; what that refers to? [56] A. Well, all of the figures there——

The Court: You have the ciphers added.

The Witness: Yes.

Mr. Butler: Yes, you have to add the ciphers.

By Mr. Butler:

Q. Now, how does the comparison compare as to this exhibit? A. The comparison here shows that the largest percentage increase over this period was obtained by the Seaboard Air Line, and the second largest by the Florida East Coast Railway. This exhibit includes not only freight and passenger revenue but also includes mail, express, dining car and various other miscellaneous revenues. It includes all operating revenues.

The exhibit is similar to Exhibit 5 introduced at the 1949 hearing, except that the year 1950 has been substituted for the year 1947.

Q. Have you any further comments as to this exhibit? A. No, sir.

The Court: All right. Mark it 5-A.

Mr. Butler: We offer it in evidence and ask to have it marked Exhibit 5-A.

. . . The instrument last above referred to was received and filed in evidence and marked S. A. Lynch Interests Exhibit No. 5-A.

By Mr. Butler:

[57] Q. Read the title of the next exhibit, please. A. Florida East Coast Railway Company. Tons of revenue freight carried.

Q. All right. Now, go across the board and explain all of the columns, if you don't mind. Take the year 1940, first, and run across the board. A. Well, the exhibit shows a separation of the tonnage handled by the Florida East Coast Railway Company, by years, from 1940 to 1950, inclusive, into the main commodity groups, which are determined —those groupings are determined by the Interstate Commerce Commission. I don't believe it is necessary to read the figures for 1940. The headings are there, and the figures are self-explanatory.

The Court: I think that is correct.

By Mr. Butler:

Q. And describe that reference there to Receivers' estimate for future years. What is that? Explain that column. A. Well, that was an estimate by the Receivers in 1941, at which time, as I previously said, the latest traffic figures available were for the year 1940. We have used that figure here to show the tremendous change in conditions that has taken place since that time, and have made the comparison with the year 1950.

Q. Yes. A. You will note that comparing 1950 with the Receivers' [57-A] estimate that there have been very large increases in practically every category, the only exception being in the next to the last column, less carload traffic. That has actually decreased, which is probably not an unmixed blessing, because the less carload traffic is expensive to handle, and it is questionable whether the railroad gets much, if any, net from such business, but in the grand total traffic, it should be noted that the year 1950 is 126 per cent greater than the Receivers' estimate for the future

BLEED THROUGH

years. The last two lines of the exhibit show the increase in 1950 over 1940 and that generally shows the same picture as the previous comparison, the increase in 1950 over 1940 tonnage being 149 per cent.

Q. Have you any further comments on that exhibit, Mr. Gordon? A. I believe not—Oh, excuse me?

Q. Yes. What was the related exhibit with the last hearing? A. The exhibit is comparable to Exhibit Number 6 at the 1949 hearings, except that we have added on the years 1948, 1949 and 1950.

Mr. Butler: Now, we offer the exhibit in evidence and ask the Clerk to identify it as Lynch Interests Exhibit 6-A.

The Court: Very well.

... The instrument last above referred to was received and filed in evidence and marked Lynch Interests' Exhibit No. 6-A.

[57-B] By Mr. Butler:

Q. Read the title of the next exhibit, please? A. Florida East Coast Railway Company, tons of revenue freight carried, eleven months ended November 30, 1950, and 1951.

Q. Now, explain the comparison. A. The commodity groups shown on this exhibit are the same as those shown on the previous exhibit. The exhibit's significance is that it shows the very large increase in traffic in 1951 as compared with 1950 based on the first eleven months.

Q. Why didn't you take—for the purposes of comparison, why didn't you take the full year? A. The full year's figures were not available.

Q. All right. The last month of 1951, I suppose was not available? A. That is correct. The percentage increase, 1951 over [58] 1950, you will note is about—is over twenty-two per cent, and that is—there is an increase in every class of traffic except less carload.

The exhibit is the same as Exhibit Number 7 introduced in the 1949 hearings, except that Exhibit 7 showed a comparison of the first nine months of 1947 and 1948.

> Mr. Butler: We offer the exhibit in evidence and ask to have it identified as Lynch Interests Exhibit Number 7-A.
>
> The Court: Very well.
>
> . . . The instrument last above referred to was received and filed in evidence and marked Lynch Interests Exhibit Number 7-A.

By Mr. Butler:

Q. Read the title to the next exhibit, please, sir. A. New Industries Located on Railway, 1940 to 1951, inclusive, and number of carloads of road haul traffic handled in years 1947 to 1950, and eleven months of 1951, to and from such industries.

Q. Well, you might comment on it, if you will, to arrive at the difference shown by the columns. A. The exhibit, in the first column of figures, shows the total number of new industries established from 1940 to 1951, inclusive, the 1951 figures, going to November 30th only. The number of new industries, which were established during this twelve-year period, and which industries are still operating on the Florida East Coast, is shown in that column. That means [59] that some of those industries were established in the earlier period from 1940 to 1946, say; others were established as recently as 1951. There are a total of 411 such industries, of which 316 come under the manufactures' and miscellaneous group.

The last five columns of the exhibit come under the heading, carloads of road haul traffic handled. It will be noted that the total of such business to and from these new industries is a substantial amount, varying from 32,402 cars in 1947 to as high as 62,072 cars during the first eleven months of 1951. I believe that that showing explains what

BLEED THROUGH

is a result, perhaps, of the showing in some of the other exhibits; the exhibits relating to the growth in traffic on the Florida East Coast, and some of my later exhibits which relate to the economic conditions in Florida. In other words, it is indicative of the fact that the railroad is operating in a growing territory.

The exhibit is similar to Exhibit 8 introduced at the January, 1949 hearings, except that we have brought it up to date.

The Court: All right. It will be filed in evidence as Exhibit 8-A.

By Mr. Butler:

Q. Before we leave that exhibit, look at your note there, Mr. Gordon. You say the source of the information is letter [60] January 11, 1951, from Mr. Jackson: Don't you mean 1952? A. I do. Thank you very much.

Q. I just wanted to call your attention to that. A. It should be 1952.

Mr. Butler: We offer—

The Court: What is that, now.

Mr. Butler: That is at the bottom of the page there, and under the heading "Source of the information". That should be 1952, January 11, 1952, instead of 1951.

The Court: Change that on the original exhibit, Mr. Clerk.

By Mr. Butler:

Q. Have you any further comments on the exhibit, Mr. Gordon? A. No, sir.

Mr. Butler: We offer it in evidence as Lynch Interests Exhibit No. 8-A.

The Court: Very well.

. . . The instrument last above referred to was received and filed in evidence and marked Lynch Interests Exhibit No. 8-A.

By Mr. Butler:

Q. Please read the title of your next exhibit. A. Comparison of Florida rail and waterborne tonnage, 1940 to 1949.

Q. Now, explain the purpose of that exhibit, please. A. The purpose of the exhibit is to compare the trend [61] of rail tonnage in Florida with the dwindling of water-borne tonnage in and out of ports, which could be considered competitive with the Florida East Coast Railway.

Q. Now— A. (Continuing) —You will note that the—whereas the tonnage on the Florida East Coast has increased substantially through 1949, the water-borne tonnage has not. The total water-borne tonnage, the coastwise traffic, I mean, has increased sixteen per cent, but that seeming increase is caused by the movement of petroleum products in tankers. If the petroleum products are excluded, it will be noted that the coastwise traffic, through ports, has dwindled to practically nothing, and is eighty-seven per cent lower than it was in 1940. Likewise, the water-borne traffic using the Intra-Coastal Waterway, between Jacksonville and Miami, has decreased forty-eight per cent.

I should also say here that the reason for using 1949 instead of 1950 is that the water-borne tonnage figures were not available for the year 1950. Those figures come from the U. S. Army Engineer's reports, and the latest ones available were 1949. Incidentally, I might point out that 1949 was a low year for tonnage for the Florida East Coast Railway Company.

The exhibit is similar to Exhibit 9 introduced in the January 1949 hearings, except that it has been brought up [62] through 1949, whereas the previous exhibit in 1949 only went up through 1946.

BLEED THROUGH

Q. Have you any further comments on that exhibit? A. No, sir.

Mr. Butler: We offer that in evidence as Lynch Interests Exhibit Number 9-A.

The Court: All right. Mark it 9-A.

. . . The instrument last above referred to was received and filed in evidence and marked Lynch Interests Exhibit Number 9-A.

By Mr. Butler:

Q. Read the title to your next exhibit, please. A. Comparison of rail and truck tonnage in Southern Region, 1940-1950.

Q. Now, what is the purpose of those comparisons? A. The purpose of that exhibit is to show what changes have taken place in the competitive situation between the railways and the trucks in the Southern Region, and, as the exhibit shows, the trucks have made greater headway, and have had a larger increase in traffic than have either the Florida East Coast Railway or all other roads in the Southern Region.

Q. Is that— A. (Continuing) It should be pointed out that the tonnage handled by the trucks represents less than, or approximately five per cent of the total tonnage handled by the railroads. One reason for this increase, I think, is this question of exempt carriers. [63] I believe some legislation is pending now in connection with exempt carriers, which means the truckers, who are allowed to truck freight of certain kinds, principally fruits and vegetables and fish and tonnage of that character, and may do so without working as common carriers. In other words, the railroads are faced with unregulated competition on certain classes of traffic, and I believe that is one of the reasons why we have this very large increase in the truck tonnage.

The exhibit is similar to exhibit introduced at the 1949 hearings, except that it has been brought up through 1950, whereas Exhibit 10 went only through 1947.

Q. Have you any further comments? A. I think not.

Mr. Butler: We offer the exhibit in evidence.
The Court: 10-A.

Q. All right, read your next exhibit, the title of it. A. "Comparison of Florida Fruit and Vegetable shipments by rail, freight, express, boat and truck by seasons, 1939-1940, to 1950-1951, inclusive."

Q. Now, explain those comparisons, please. A. Well, the purpose and significance of the exhibit is simply that it shows the relative amount of the fresh fruit and vegetable traffic in Florida which moves by rail freight, or express, or by water or by highway—truck. And, just as in the case of the previous exhibit, it shows that there has [64] been an increase in the proportion of such traffic moving by truck.

During the 1950-1951 season, however, the percentage moved by truck fell off somewhat, and the percentage moved by rail increased somewhat, compared with the previous year. It will also be noted that the—whereas, on the first—in the first two years shown in the exhibit, a large portion, or substantial portion, of the traffic formerly moved by water, that that has practically disappeared. It should also be pointed out that although in 1950-1951 the trucks handled forty-five percent, in 1940-1941, for example, the trucks and boats together handled forty-three percent. So that while the trucks have made inroads in the traffic, the rails aren't very much worse off than they were in the pre-war period.

The exhibit is similar to Exhibit 11 introduced at the January, 1949, hearings, except that it has been brought up to date.

Q. Have you any further comments as to the exhibit? A. No, sir.

BLEED THROUGH

Mr. Butler: We offer it in evidence.
The Court: Mark it as 11-A.

... The instrument last above referred to was received and filed in evidence and marked Petitioner Lynch's Exhibit No. 11-A.

By Mr. Butler:

Q. All right, take up the next exhibit. Read the title, [65] please. A. "Comparison of revenue passengers carried, Florida East Coast Railway, versus Competing Airlines, water carriers and motor coaches, 1940-1949."

Q. Well, comment on the comparison, if you don't mind, Mr. Gordon. A. The figures for rail, water, and bus, are annual figures from 1940 to 1949. The figures for the airlines cover the cities which are competitive with the Florida East Coast Railway, but are for certain selected months, namely, September, 1940, September, 1946, and September, 1949. The reason for using only a month there is that these figures are not prepared regularly and on an annual basis. They are based on certain studies or surveys made by the Civil Aeronautics Board. It will be noted that the—both the airlines and the bus lines have increased much more than have the Florida East Coast Railway in the number of passengers carried over this period. The water traffic increase has been very small. The footnotes show the sources and also certain explanatory notes in connection with the traffic. The exhibit is similar to Exhibit 12 introduced in January, 1949, except that it has been brought up through 1949 instead of only through 1946. In that connection, I would like to point out that there is some question in my mind about the airline figures. You will note that the 1949 figures show less than 1946, but those figures [66] are as shown by these Civil Aeronautics Board surveys. There may be some errors in them somewhere, but they are as reported by the Civil Aeronautics Board. We didn't have an opportunity to find out whether or not

there was some different method of counting the passengers or what, but I want to point that out, because it looks a little peculiar to see the air traffic dropping off between 1946 and 1949.

By the Court:

Q. What was the reason for that decrease in air travel? A. I was just saying, I don't know—the figures don't look right to me, but they are as reported by the Civil Aeronautics Board.

Q. I was wondering, myself, why that decrease occurred. A. I don't know. I think there is something wrong there.

By Mr. Butler:

Q. Have you any further comments? A. No, sir.

Mr. Butler: We offer the exhibit in evidence as 12-A.

. . . The instrument last above referred to was received and filed in evidence, and marked Petitioner Lynch's Exhibit 12-A.

By Mr. Butler:

Q. Now, read the title of your next exhibit, please. A. "Increase in land and farms, counties served by Florida East Coast Railway Company, versus State of Florida and entire United States".

[67] Q. Well, go ahead. Explain the comparisons. A. Well, this is the first of our exhibits which relate to the agricultural situation in Florida and in the territories served by the Florida East Coast Railway Company.

The counties served by the Florida East Coast Railway are listed on the left, and the acreage devoted to farming is shown for the years 1940 and the year 1950. The same information is shown for the whole State of Florida, and for the United States. It will be noted that the increase in

BLEED THROUGH

the Florida East Coast territory has been substantially more than in the State of Florida as a whole, and a great deal more than the United States as a whole. The exhibit is similar to Exhibit 13 introduced at the January, 1949, hearings, except that the year 1950 has now been substituted for the year 1945.

> The Court: Well, that is rather interesting, that the acreage devoted to farming in Florida has more than doubled in the last ten years.
>
> Mr. Butler: In some counties, apparently, it has been increased over four hundred percent, your Honor.
>
> The Court: Yes. I would have thought it would have been the other way, but apparently not. Go ahead. Do you want to put that in as 13-A?

By Mr. Butler:

Q. Have you any further comments, Mr. Gordon, on the exhibit? [68] A. No, sir.

> Mr. Butler: We offer it in evidence as Exhibit 13-A.
>
> . . . The instrument last above referred to was received and filed in evidence and marked Petitioner Lynch's Exhibit 13-A.

By Mr. Butler:

Q. Now, read the title to your next exhibit, please. A. "Increase in orange and grapefruit production, counties served by Florida East Coast Railway Company, versus State of Florida and entire United States".

Q. Now, comment on the comparison, please. A. I might first state that there was an error in typing the exhibit. Over the second column of figures, was typed "1945 census"; some of the exhibits may have been changed to read

"1950 census." If they have not been changed, they should be changed to read "1950 census".

Well, this simply shows a comparison of the production of the citrus fruit in the counties served by the Florida East Coast in the State of Florida and in the country as a whole, and, based on the 1950 census, the Florida East Coast counties increased about forty-one percent, whereas the State of Florida as a whole increased about seventy-five percent; and the country as a whole forty-six and a half.

The Court: All right, mark it 14-A.

. . . The instrument last above referred to was received and filed in evidence and marked Petitioner Lynch's exhibit 14-A.

[69] By Mr. Butler:

Q. Is that the companion exhibit to Exhibit 14 of the January 1949 Hearings? A. That is correct, except that we have now used the 1950 census figures instead of the 1945 census figures.

Mr. Butler: We offer the exhibit in evidence as 14-A.

The Court: Very well.

By Mr. Butler:

Q. Now, take up your next exhibit, please, sir—just a minute, here, Mr. Gordon, just a second—all right, now go ahead. A. It is entitled "Value of vegetable crops (excluding potatoes) harvested for sale, counties served by Florida East Coast Railway Company, versus State of Florida, and entire United States".

The exhibit shows not only the 1940 and 1950 census figures, but also the 1945, and the reason being that we were unable to obtain just the same unit or factor that we used in our January, 1949 exhibit. There we had vege-

BLEED THROUGH

table crops harvested for sale and for farm household use. The census reports are now changed, and report only the amounts harvested for sale; so, for that reason, we have shown the percentage increase of 1945 over 1940 and of 1950 over 1940. It will be noted that the counties served by the Florida East Coast Railway show approximately the same percentage increase as the entire State of Florida. The figures for the United States for [70] 1950 are not yet available. With the exceptions that I have noted, the exhibit is similar to Exhibit 15 introduced in the January, 1949, hearings.

The Court: Filed as 15-A in that connection.

Mr. Butler: Offered and filed as 15-A.

. . . The instrument last above referred to was received and filed in evidence, and marked Petitioner Lynch's Exhibit 15-A.

By Mr. Butler:

Q. Read the next title, the next exhibit. A. "Farm and agricultural growth indicators, Florida and the United States."

These various items shown here are some of the indications of the agricultural growth in Florida compared with the United States. I don't think it is necessary to read all of them, but I might point out some of the——

The Court: I think the exhibit is self-explanatory.

The Witness: The exhibit is similar to Exhibit 16 introduced in the January, 1949 hearings.

The Court: Mark it 16-A in evidence.

. . . The instrument last above referred to was received and filed in evidence and marked Petitioner Lynch's Exhibit 16-A.

The Witness: With the exception: That there, again, the item showing "non-real estate loans to

farmers" was not available, on the same basis, so that we have restated both the 1940 and 1950 figures on this new basis, which is avail- [71] able now, those figures being taken from the United States Department of Agriculture agricultural statistics. Otherwise, the figures are on the same basis, brought up to date.

Mr. Butler: We offer the exhibit in evidence as Exhibit 16-A.

The Court: Aren't the rest of these exhibits pretty well self-explanatory? Is there anything else there——

Mr. Butler: I think most of them are, your Honor. There isn't a great many more of them.

The Court: Why not just put all of them in evidence, and then, if you want to make any comment or reference to them, you can do so.

Mr. Butler: All right.

The Court: Because most of the things that the witness said here are evident from the face of the exhibits. Just read the title of each one, I will give them a number, and you can put all of these in evidence without any further——

By Mr. Butler:

Q. All right, sir, just read the title of the next exhibit, please. A. "Increase in population, counties served by Florida East Coast Railway Company, versus State of Florida and entire United States."

The Court: Well, that goes in as Exhibit 17-A. Go ahead.

[72] . . . The instrument last above referred to was received and filed in evidence and marked Petitioner Lynch's Exhibit 17-A.

BLEED THROUGH

By Mr. Butler:

Q. Read the next one, please. A. "Increase in effective buying income, counties served by Florida East Coast Railway Company, versus State of Florida and entire United States".

The Court: That is Exhibit 18-A. Go ahead.

. . . The instrument last above referred to was received and filed in evidence and marked Petitioner Lynch's Exhibit 18-A.

Q. Well, suppose that on this Exhibit 18-A here, you just explain—as I understand, one of these exhibits is before taxes and the other is afterwards. Just briefly explain that. A. Yes, sir. The 1940 figures are before income taxes and the 1950 figures are after income taxes.

The Court: Wait a minute, now. Is that noted on the——

Mr. Butler: It is not noted on the exhibit.

The Court: Well, let me put it down here, "1940 before taxes".

Mr. Butler: Yes.

The Court: 1950 is after—all taxes? Or after income taxes only?

The Witness: No, after—after income and—both Federal and State income taxes.

The Court: Well, we don't have a State. All right. Take [73] up the next one.

Q. All right, take up the next one.

The Court: That is 19-A, that is "increase in retail sales". Is there anything to be explained on that. I think that is pretty obvious, 19-A. All right, take the next one.

. . . The instrument last above referred to was received and filed in evidence and Marked Petitioner Lynch's Exhibit 19-A.

Q. Take up 20. Take the next one.

The Court: "Market Growth indicators".

The Witness: Market Growth——

The Court: Exhibit 20-A. All right. Take up the next one.

. . . The instrument last above referred to was received and filed in evidence and marked Petitioner Lynch's Exhibit 20-A.

The Witness: "Business and industrial growth indicators, Florida and United States.

The Court: All right. 21-A.

. . . The instrument last above referred to was received and filed in evidence and marked Petitioner Lynch's Exhibit 21-A.

By Mr. Butler:

Q. Then read the next one. A. "Increase in value of manufacturer's sales, Florida versus United States, 1939-1950."

The Court: Well, sir, that is filed as Exhibit 22-A.

[74] . . . The instrument last above referred to was received and filed in evidence and marked Petitioner Lynch's Exhibit 22-A.

The Court: As we go along, if you think there is anything to be explained on these exhibits, just interrupt and say so.

The Witness: Well, there is just one point on this one. It is in somewhat different form than Exhibit 22 in the 1949 hearings because the Department of Commerce has changed the unit that it uses.

The Court: What is the change?

The Witness: The change, instead of being called "value of manufactured products", it is now called "value of manufacturer's sales".

The Court: I see. All right.

BLEED THROUGH

By Mr. Butler:

Q. Now, the last one was what? I kind of lost the drift. A. That was 22-A. "Increase of value of manufacturer's sales".

Q. Now, we don't have, as I understand it, Mr. Gordon, Exhibits that correspond to 23 and 24 of the last hearings, do we? A. That is correct.

Q. All right, take up the next, if you will.

The Court: Now, wait a minute, let us get those straight. The next two now are "Tonnage of products of agriculture originating on line and terminating on line". That is 23-A and [75] 24-A, respectively.

Mr. Butler: I take it, your Honor, to follow the former exhibits, those really should be this——

The Witness: Should be 25-A and 26-A.

Mr. Butler: 23 and 4.

The Witness: There are no exhibits comparable to 23 and 24.

The Court: All right, let me get that straight now, 25-A and 26-A. 25-A is "Tonnage of products of agriculture originating on the line", 26-A is "Tonnage of products of agriculture terminating on the line". So that omits 23 and 24?

Mr. Butler: Yes, sir; that is correct.

The Court: No exhibits 23 and 24. Now, that next one—the last one there——

The instruments last above referred to were received and filed in evidence—and marked Petitioner Lynch's Exhibits 25-A and 26-A.

By Mr. Butler:

Q. Just a minute, please. Don't you think you had better explain those summaries on the last page of 25-A and 26-A, Mr. Gordon? A. Well, the last page of 25-A summarizes the carload traffic and LCL traffic originated on line for the Florida East Coast.

By the Court:

Q. What do you mean "LCL traffic"? [76] A. Less carload.

Q. Oh, less carload lots, yes. A. And that is the detail of the information which is shown on Exhibit 2-A. In other words, this shows it for a series of years, and the sheets immediately preceding this one in Exhibit 25-A show it in some detail, by groups of commodities, and then more important commodities.

Q. Well, now, what is the exhibit to which 26-A refers? That is the detail of what exhibit? A. That is also the detail of Exhibit 2-A, the second block, the "terminated" block. Both of them refer to Exhibit 2-A.

The Court: All right.

Mr. Butler: Now, the next exhibit is a rather important exhibit, your Honor. I guess we can get through with it if your Honor wants to go on with it.

The Court: Well, you want to question him about it?

Mr. Butler: (Addressing the witness): Well, you might go ahead and explain it.

The Court: Well, it is time to adjourn, to recess for lunch. Now, we will go ahead and have lunch, and get to this last one after lunch.

Mr. Butler: We only have two more exhibits.

The Court: All right. Let us have order. You say you have got two more? I only have one more. Where have you got [77] another one, Senator?

Mr. Butler: Yes, sir. I don't know that you have a copy of it, but it is the balance sheet of the railway, which is supplied by the Receiver.

The Court: We will take that up after lunch. Court will be in recess until 2:00 o'clock.

. . . And thereupon Court adjourned to be reconvened at 2:00 o'clock p. m., Monday, February 4th, 1952.

BLEED THROUGH

[78] . . . And at 2:00 o'clock p. m., Monday, February 4, 1952, the proceedings herein were reconvened and the following further proceedings were had:

The Court: You may proceed, Gentlemen.

Senator Butler: Are you ready to proceed, Your Honor?

The Court: Yes.

Mr. William A. Gordon having been previously produced and first duly sworn as a witness, was recalled to the witness stand and further testified as follows:

Further direct examination by Senator Butler:

Q. Mr. Gordon, I wish you would take now, your next exhibit and read the title to the exhibit, then take your time and explain the exhibit to the Court. Each item.

The Court: Which one, now? The adjusted net income before fixed charges and Federal income taxes? Is that what you are going to take up now?

Senator Butler: Yes, 1946-1951 inclusive.

A. This exhibit shows in the first five column of figures, the bases on which the Interstate Commerce Commission arrived at their adjusted net income before fixed charges and Federal income taxes.

The last six columns of figures shows the revision of [79] those figures as I think they should be revised.

I would like first to talk about the figures in the first five columns headed as of Interstate Commerce Commission's Fifth Supplemental Report.

The first line "Railway operating revenues" are the Railway operating revenues as reported by the Debtor, to the Interstate Commerce Commission.

The second line shows a reallocation of back mail pay, which was actually received by the Debtor or credited in the Debtor's accounts in the year 1950, but which the Commission, for the purposes of normalizing the income account, spread back to years to which it applies. In other words, some of that actual mail pay applied to the years 1947, 1948 and 1949, and the Commission has, and I think properly so, adjusted those years' revenues in the amount shown in the second line of the exhibit. That was the only adjustment in revenues which the Commission made. So that the sum of the first line and the second line is equal to the item marked "adjusted railway operating revenues".

Now, when it comes to Railway operating expenses, we first show the figures as reported to the Interstate Commerce Commission by the Debtor. That line starts off, for example, the year 1946, was $20,721,821.00.

The Commission then made certain adjustments in the operating expenses in order to normalize them. The first [80] adjustment relates to deferred maintenance and you will notice that in the first three years shown in the exhibit, amounts of between two hundred thousand and three hundred thousand per annum are deducted from the operating expenses. That simply means that in those three years the Debtor performed more maintenance than it normally would perform, because of the fact that in prior years, some maintenance had been deferred.

The next adjustment which the Commission made was to deduct from the operating expenses, the charges in connection with the new rail program. The relaying of the debtor's main line with 112 and 115 pound rail. Those figures are in the line which start in 1947 with minus $894,453.00. And, they deduct those amounts from the actual operating expenses because of the fact that these were unusual and non-recurring expenses in connection with rebuilding the main line or relaying the main line with this new rail.

BLEED THROUGH

The next adjustment is an addition to operating expenses, and that figure is $518,856.00. That same figure occurs each year from 1947 to 1950, inclusive. That figure —and incidentally, that is one adjustment that the Commission made with which I do not agree—represents their idea of normalizing all of the rail laying programs. In other words, they attempted to—having deducted the actual expenses of this big main line program, they then put in a partial offsetting figure which is supposed to represent the normal amount that [81] the Florida East Coast would spend on rail over the cycle of the life of the rail.

The Court: How does all this have a bearing on whether or not this plan is fair and equitable?

A. I believe it has a very important bearing on it for this reason: That we certainly ought to know what the normal earning power of the Florida East Coast is if we are going to rely on the earnings value of the railroad, and we can't do that unless we have a fairly exact measure of the actual earning power of the railroad. Obviously, if there is a big rail program going on, you have got to make some allowance for that, because they don't do that every year. They only do that over this short period, and then that rail lasts for twenty-five or thirty years, or whatever the life of the rail turns out to be.

The Court: So you think the Commission was wrong in its determination of the capitalized value on the basis of earnings?

A. That's right, sir.

The next adjustment is for the Okechobee Branch retirement, and the large amount in that is a deduction in the year 1947. There were minor adjustments in succeeding years. I have no criticism of that adjustment.

The net result of these adjustments, as the Commission found them, is shown opposite the line entitled "Adjusted Railway operating expenses".

[82] Since the Commission's adjustments affected only Railway operating revenues and Railway operating expenses and did not affect rents and taxes, in the next section of the exhibit I show the net effect of these adjustments by showing first, the net revenue from Railway operations, which is simply the difference between the revenues that are taken in and the expenses that are paid out.

And then I show the adjusted net, which again is the difference between the adjusted Railway operating revenues in the fourth line and the adjusted Railway operating expenses in the thirteenth line of the exhibit. The difference between those two figures, then, shows the net adjustments to income and in each year the Commission found that the income available as reported should be increased, those increases varying from $231,666.00 in 1946 to $1,767,000 odd dollars in 1947.

The adjustment is then carried down in the next—or rather the last block of the upper part of the exhibit, and added to the reported net income available.

Then, in the last line of the main section of the exhibit appears "adjusted net available for fixed charges and Federal income taxes".

Now, those figures are as found by the Interstate Commerce Commission with one exception. In the year 1946 the Commission found adjusted net available for fixed charges and income taxes of $3,315,197.00.

[83] I believe that there was an arithmetical error in that figure. I have followed through what the Commission actually said they did in making these adjustments, and in each of these other years I have arrived at the exact figure which the Commission found. But, in 1946 there is a difference of approximately $198,000.00. Whether it was caused

BLEED THROUGH

by a transposition of figures or by some other error, I don't know.

The Court: What figure is that amount contained in now?

A. That figure—in the year 1946?

The Court: Yes.

A. The figure of $3,517,780.00, and you will notice there's a footnote after that which explains the Fifth Supplemental Report, shows a different figure. Apparently in error.

The Court: Wait a minute. I don't see that. Are you speaking of normalized income before Federal taxes?

A. Yes, in the very first column——

The Court: Oh, that one. I see it, yes. I was looking at the wrong one. 1946. Yes, I see it.

A. All of my remarks, practically all of my remarks up to this time have been confined to the Commission's determination of the net available.

The Court: Yes, I see. I see.

A. Now, going to the right-hand half of the exhibit, which is headed "Revision basis", I show what I believe are the proper normalized figures, and that half of the exhibit is a combina- [84] tion of two things.

In the first place it translates into dollars, a certain qualifications or doubts the Commission expressed with respect to its own adjusted net income figures.

The Commission said that in considering these averages of income as so adjusted, it should be borne in mind, (1) that the deduction of each year of $518,856, (except in the year

1946) from the amount expended by the Debtor's Trustees on the rail laying program, may be excessive.

(2) That the income for 1950 is adjusted on the basis of an assumption that the Trustees expended $2,052,385.00 (chargeable to operating expenses) for that purpose as estimated by them in June 1950, and that the amount actually so expended, which is not of record, may be different, and

(3) That no adjustments have been made to take in account the effect of hurricanes, freezes and floods occurring in 1947-1949, the hurricane of 1947 being of unusual severity. That's the end of the quote.

Now, I have attempted to adjust for those items—in other words, I have translated those qualifications or doubts of the Commission into dollars and made the adjustments which I believe are fair in setting up the right-hand half of this exhibit.

In addition to that, I have also taken into account some things which occurred after the Commission's decision [85] which the Commission could not have known about at the time they made their decision.

For example in the latter half of December 1951, the Debtor acquired or received five new diesel locomotives. So I have adjusted or normalized these figures to give effect to the operating savings which the Trustees estimated would result from the acquisition of these locomotives.

In addition to that I have added the results for the year 1951, which of course were not available to the Commission at that time.

Now, going down the right-hand half of the exhibit you will note that with respect to the reallocation of the 1950 back mail pay I have adopted the Commission's revisions.

I have one other adjustment in revenues in the year 1947. I have added as an adjustment to the revenues, $692,000.00, which is the estimated loss in net revenue to the Florida East Coast Railway because of the 1947 hurricane,

BLEED THROUGH

freezes and floods. And, as I pointed out, that was one of the qualifications that the Commission made in their Fifth Supplemental Report.

Those figures, relating to the 1947 hurricane, also appeared in my Exhibit 27 introduced in the January 1949 Court hearing.

The Court: That is this present exhibit which will be 27-A, is it?

A. That takes down as far as the operating revenues and the only difference between my figures and the Commission's is [86] the adjustment for the 1947 hurricane.

Now, when we come to operating expenses there is—there are a number of adjustments which are different from the Commission's adjustments. The first adjustment relating to deferred maintenance, is exactly the same as the Commission's.

The adjustment for the normal—for the new rail program are the same in certain years and different in other years. For example in 1946, the Commission did not deduct the money spent on the new rail program relating to the Debtor's main line program. That is in the amount of $459,537.00, which I believe should be deducted.

For the next three years, that is 194——

The Court: Wait a minute, now. What was that figure you thought should be deducted?

A. 1946, $459,537.00.

The Court: For what?

A. That's for the new rail program. That was money that was actually spent by the Debtor in the year 1946 and charged to operating expenses in connection with the new rail that they laid in their main line that year.

Q. Well, you say they didn't take it off, here, on this——

A. The Interstate Commerce Commission did not. Now,

they had a reason for it, and that is—and that will appear, I think, a little later as I go on. This whole thing about the rail program, your Honor, is tied in with this normalization of [87] the rail program and I will get to that in a few minutes, but I thought I would like to point out these differences so it will be clear on the record, just where it differed from the Commission's figures.

During the years—or, for the years 1947 to 1949 inclusive, the adjustment for the new rail program is exactly the same as the Commission found. However, in 1950, there is a substantial difference.

The Commission was working with estimated figures for 1950, and they used this figure of $2,052,385.00. The actual charges to the rail program in 1950, were nearly half a million dollars less than that, so that the Commission made too large a deduction from operating expenses in the year 1950.

Q. Have you got the figures? The actual figure? A. Yes, sir.

The Court: What is it?

A. $1,528,748.00. Of course the Commission did not have—did not use 1951, and we show the actual charges to the rail program. I believe those figures are up to and including October 31, but I was assured that they were substantially complete and they amount to $156,513.00.

Now, the next——

The Court: Going back to 1946 for a moment. You say the Commission should have deducted $459,537.00 for new rail program? That is instead of $231,666.00?

[88] A. No, sir. That $231,000.00 is deferred maintenance. You see, opposite the new rail program, they have my figure here——

The Court: Oh, I see. I am looking too high up. They didn't deduct anything that year at all.

BLEED THROUGH

A. Yes. They didn't disturb it at all. The reason for that was that they were using this normalization figure which appears on the next year and also omitted that year, $518,000.00, so they apparently rationalized the thing by saying since normally they would spend $518,000.00, there was no need of making this deduction of $459,000.00, so they just cut out both figures, and of course I disagree heartily with the use of the $518,000.00. And, that's the next point that I would like to make.

Instead of a normalization figure which the Commission reports in there at $518,856.00, I believe that that adjustment should not be larger than $221,638.00.

Now, the history of that normalization figure goes way back to Exhibit 407, which was introduced by an Atlantic Coast Line witness in hearings before the Interstate Commerce Commission. The $518,856.00 is really divided into two portions.

The first one is a figure of $315,672.00, which is supposed to relate to the normalization for main line rail renewal. In other words it corresponds with the work that the Florida East Coast has been doing ever since 1942, in relaying [89] the main line.

Now, I would like to talk first about that $315,000.00 figure. In the first place it was determined by Witness Ormond of the Atlantic Coast Line, based on partially estimated figures.

The actual figures for the whole program of relaying the main line were not available at that time because that program had not been completed. It has now been completed and we have actual figures.

In the second place the witness not only included the charges to operating expenses in connection with that program, but he included the charges to investment accounts.

Now, for some purposes that would be perfectly proper way to handle the matter. But in my opinion it is not a proper way, here, because what we are trying to do here

is to get a normalized income account for the Debtor. And, if they started throwing in charges to capital accounts, operating expenses are distorted. We should stick to charges to operating account.

Now, of course, Witness Ormond argued, when he put the figures in, that it was a fair thing to do, the way he had done, because thirty years from now or twenty-five years from now, when it is necessary to relay the main line of the railroad along about 1970 or so, or possibly '71, when it is necessary to start relying the main line of the railroad again, the charges to operating expenses at that time would be the total charge for the rail assuming that you are replacing the rail in [90] kind.

In other words, if they decide that the rail is heavy enough then, and they put 112 pound and 115 pound rail in, that would represent the charge to operating expenses based on the present level of charges.

Now, that sounds logical, but after all we are trying to adjust these income accounts—this income account of the Florida East Coast Railway at the present time, not in 1970 or 1975. We don't know what's going to be the situation in 1970 or '75. Maybe the Florida East Coast won't be a double track railroad then. Maybe they will decide they can save money by putting in centralized traffic control and have a single track railroad which will handle all of the traffic just as expeditiously as is needed, and they would only be laying—they would be laying a much smaller proportion of the rail that they formerly laid to take care of their main line.

[91] So it seems to me that it's unfair to include these capital charges only for the reason that if you did this work in 1970 or 1975, this is what it would probably cost you. Now, correcting Mr. Ormond's figures for those two items. In other words, substituting the actual costs for the estimated costs and eliminating the charges to capital, his figure is reduced from $315,672.00 to $221,638.00, which is the figure that I have used in this revised basis.

BLEED THROUGH

Now that's only part of the story. Because, in addition to three hundred and fifteen thousand that witness Ormond wanted to make an adjustment for he has another figure of $203,184.00, which is the difference between the $315,000. I have been talking about and the $518,856.00, which the Commission adopted. And that difference of the $203,184.00 represents Mr. Ormond's ideas as to the normal amount to be spent by the debtor per year for relaying all of their other tracks, leaving out the main line program, but taking their branch lines and their passing tracts and yard tracks.

If Mr. Ormond had analyzed what the Debtor had done in the way of rail program in recent years with respect to passing tracks, yard tracks and branch lines, I am sure that he would not have suggested any such adjustment.

During the ten year period 1942 to 1951, the FEC replaced rails at the average rate of 15 miles per year exclusive of the main line rail program.

[92] During the next ten years it is estimated that they will only have to replace 8.6 miles per year, and during the following ten years only two miles per year. So that it is quite obvious that during the period from 1942 to 1951, which includes this period that we are trying to normalize, the Florida East Coast actually spent more than they normally would spend on such work, so that instead of there being an adjustment to increase their expenses to place them on a normalized basis, the adjustment should actually be the other way. There should be a reduction in their actual expenses in order to normalize them.

Now, I have not been able to obtain exact figures as to what it should be, but I am satisfied that there should be an adjustment of that kind. So that to that extent the revised figures that I have shown here are on a conservative basis.

In other words, if they were adjusted as they should be, the net available here should be slightly higher. It would not be a terrifically large amount, but it would amount to some few thousand dollars a year.

So that while it appears where I made the adjustment of $221,000.00, that I have only dealt with the adjustment for the main line program, actually I have given consideration to whether or not there should be an adjustment for all of the other rail programs. And I have come to the conclusion that there either should be no such adjustment, or, if any [93] adjustment is made, it should be made in the reverse direction.

Now, the next item relates to the Okeechobee branch retirement, and there my figures again, agree with the Commissions, for the years 1947 to 1949, inclusive. There is a slight adjustment in 1950 and 1951, which I have made, but which is in accordance with the Commission's theory of adjustment as far as the Okeechobee branch is concerned.

The next item, non-recurring charges, 1951, is $140,000. and that relates principally to unusual repairs to the P & O docks, and is a figure represented to me by the Trustees as a non-recurring item for 1951.

The next item is increased expenses account 1947 hurricane. That appears opposite 1947 and results in a reduction adjustment in expenses for that year. That figure was shown on Exhibit 27 in the 1949 court hearing.

The adjustment on the Diesel locomotives is shown on the next line. I have already mentioned that. It is based on the Trustees' estimate. The figure for 1951 is slightly less than the other years because the locomotives were in service part of the time during the second half of December.

The rest of the exhibit, I believe, speaks for itself as far as the handling of the adjustments are concerned and the final revised figures appear on the last line of the upper portion of the exhibit.

[94] Then, down in the lower part of the exhibit we will find various average figures based on 3-4-5 and 6 year averages. The Commission used certain of those figures and I have got them here, similar to the Commission basis. But you will note that, for example, for the five year period 1946 through '50, which the Commission found to be

BLEED THROUGH

$2,520,688.00, that my corresponding figure for that is $3,091,170. If the year 1951 is added and a six year average taken, there is very little difference, the figure being $3,060,529.00. I think that explains the exhibit. I hope it does.

The Court: Now, that is comparable to the original exhibit 27, is it?

A. Not exactly, sir. It started with a little different basis, and because the Commission——

The Court: Should this be numbered 27, or separately?

A. I imagine it should be numbered 27-A. It corresponds to it but it is not identical.

The Court: Well, we will take up the next one.

Senator Butler: We offer the exhibit in evidence as Exhibit 27-A.

. . . The instrument last above referred to was received and filed in evidence and marked Lynch Interests Exhibit 27-A.

Senator Butler: Have you got the exhibit—the general balance sheet?

A. No, sir.

[95] The Court: Well, I see the general balance sheet has been furnished by the Debtor, itself.

Senator Butler: Yes, sir, and it corresponds to the sheet introduced at the last hearing.

The Court: Mark it 28.

. . . The instrument last above referred to was received and filed in evidence and marked Lynch Interests Exhibit No. 28.

By Senator Butler:

Q. Now, Mr. Gordon, at the last hearing I think you testified what, in your opinion, would be the normal operating revenues and the net income available for income taxes and fixed charges of this railroad in normal future years. Didn't you testify to that? A. Yes, sir.

Q. What was the—what did you testify—what amount did you testify to? A. Well, I testified that I believed that the future normal year net available before income taxes and fixed charges of the Debtor would be $2,850,000.

Q. As of this time, would you compare—or, as of this time would you care to revise that estimate? A. I think the record fully supports that estimate. In fact, I think it goes further than that. And I believe that an estimate for the future normal year should be approximately three million dollars.

[96] The Court: Before taxes?

A. Yes, sir.

The Court: Before taxes.

By Senator Butler:

Q. Now, Mr. Gordon, have you made any studies as to the effect of economies that might be accomplished by a complete Dieselization of this road? A. No, sir, I have not. I understand that some such studies have been in process, and when I was in St. Augustine, oh, perhaps nearly three weeks ago, I was informed that General Motors, I believe, was making some such study. But I was given no indication that that study would be completed in the near future.

Q. Well, you have made no study, as I understand? A. That is correct. I know they were doing that and then, two or three days ago I was told that they had finished their study, but I have not heard—I have not had an opportunity to analyze it or make any study of the situation.

BLEED THROUGH

Q. Have you made any studies as to the increased earnings of the road that might result from the pending proposed rate increase? A. No. I should have stated that on my exhibit I have not given consideration either to changes in freight rates or passenger rates, or changes in rates of pay. Except insofar as they may have taken place up to this time. [97] That situation is in a rather fluid state, and I therefore did not attempt, at this time, to anticipate what might occur in the future.

Q. Had you given any consideration to the increased earnings of the road that might or may result from the construction of the cement plant at Bunnell? A. No, sir, I had not.

Q. In preparing for this hearing have you had an opportunity to form an opinion as to the balance of materials and supplies appropriate for the operation of this railroad as of the date of the sixth supplemental report, which I believe was on or about the end of October, 1951? A. Yes, sir.

Q. What? Elaborate on that a little.

Mr. Bourne: I am going to object to that, your Honor, for this reason. That was a specific issue before the Commission. It relates exclusively to a situation which was fully developed and existed at the time, and the record discloses, before the Commission, that it was fully developed before the Commission, and it seems to me it is not suitable here to have an opinion from the witness which is simply an expression of a disagreement with the Commission.

Senator Butler: Now, that is where you are wrong, Mr. Bourne. If you had let him answer the question, I think the answer would be most satisfactory to you.

[98] Mr. Bourne: Well, I hope so. But, that is not the issue here. I do not want——

The Court: I want everybody to understand that I do not try this case de novo, here. The Commission determines those matters and I—the only function performed by this Court is to determine whether the plan is fair and equitable. But, the statutes contemplate that the Court hear additional testimony on these questions, and I will go ahead and hear it. But, I take notice of the rather different powers of the Commission and the Court in this matter. I will let him answer the question. The objection is overruled. Go ahead and answer the question.

A. Based on the operating expenses of the Florida East Coast for the year 1950 I would have estimated the materials and supplies balance necessary at the time of the sixth supplemental report as approximately $2,525,000.00. That is within three percent of the figure found by the Commission of $2,600,000.00.

Q. So, you are not in any particular disagreement with them? A. No, sir, I think their figure was quite fair.

Q. Have you any opinion as to the corresponding increase as of the present date? A. As of the present time, and with the 1951 operating expenses available, I believe a fair figure for your materials and supplies, the balance would be about $2,730,000.00.

[99] Q. Would you like to—before you conclude your direct examination, Mr. Gordon, would you like to make any comments on any of the exhibits that you might have overlooked? A. Well, there's one comment I overlooked in connection with Exhibit 8-A. That is the one that shows the increased traffic brought about by new industries that have been established since 1940.

You will note that in 1950, the last full calendar year available, the total business—the total carloads resulting from these new industries amounts to about fifty thousand cars. That figure is about one third of the total carload

BLEED THROUGH

handled by the Florida East Coast in the year 1950, which gives some idea of the magnitude of these new industries.

Senator Butler: Now, just a minute, please. Just a second.

The Court: Does that conclude your direct?

Senator Butler: Yes, you may inquire.

The Court: Now, before you go to your cross examination, you have introduced an exhibit showing, or with reference to new equipment purchased and moneys expended for improvements and betterments. You have it divided into years from 1941 to 1946, and 1947 to 1951, and I asked you if that had any reference to the lien orders imposed and you said no. But, somebody said they would see, later, and would give me the total amount of liens for those items. Was that you that was going to do it, or somebody else?

[100] A. No, some other witness.

Senator Butler: No, sir, the duPonts were going to do that.

The Court: All right, take him on cross.

Cross examination by Mr. Bourne:

Q. Mr. Gordon, in preparing your testimony here, I presume you have read the Commission's entire fifth and sixth reports, have you not? A. I have glanced through them. I do not believe I have read them very carefully, word for word, but I read the pertinent parts that related to the income accounts, and they related to the assignment that I had here.

Q. Precisely, what was your assignment, would you mind stating that again? A. My assignment was primarily to bring up to date, the exhibits which I introduced in the January, 1949 hearings. There were two or three minor exceptions to that additional request. But, generally speak-

ing, that was the request. I think I mentioned this morning that I was requested to look into this rail adjustment as an additional item, and one or two other matters.

Q. Were you asked to study the Commission's estimate of the normal income of the Atlantic Coast Line? A. Oh, no, sir, no.

[101] Q. Were you asked to make a comparison of the forecast of the Florida East Coast and the Atlantic Coast Line income and the actual performance, since? A. No, sir.

Q. Were you asked to compare—were you asked to determine the fairness of the plan? A. No, sir.

Q. You formed no opinion of that? A. No, sir. All I was interested in was in determining what was a fair normalized earning power of the Florida East Coast.

Q. And that's shown, isn't it, by you—in your own opinion—by your Exhibit 27-A? A. That's right.

Q. And, Exhibit 2-A through 26-A, show what? A. Well, they show a great deal of the background that I relied on in connection with the estimate for the future.

Q. And what was—your estimate for the future is three million dollars? A. Yes, sir.

Q. And what do you figure the average earnings to have been in the recent past? A. In the recent past,over—it depends on how many years you take.

Q. Well, how many years do you consider suitable to take? [102] As of today? A. Well, I think that's a question of judgment as to——

Q. Well, I am asking your judgment. And, I will put it this way: how much weight do you think ought to be given to the year 1946? A. Well, I think not as much weight as to the more recent years.

Q. And as between, or among the more recent years, do you think that any are particularly more significant than the others? A. Yes, I think 1949 is significant, because it was a very low traffic year for the Florida East Coast. It was an unusually low traffic year and therefore should be

BLEED THROUGH

discounted. But, in answer to your question, I would think now of——

Q. Well, I—— A. Well, may I answer the question, please, sir?

Q. Go right ahead. A. I think the five year period for 1947 to 1951 is probably reasonably representative of recent conditions. It includes 1949, which is a low year, but it includes '51, which was a good traffic year.

Now, that averages $2,885,665.00.

Q. As adjusted by you? A. That's correct.

Q. Have you figured that out, as adjusted by the [103] Commission? A. No, because they didn't have those figures. They didn't have 1951.

Q. Well, wouldn't it have been possible for you to have made a calculation of income in, say, 1951 by making the type of adjustment the Commission made, and excluding the type of adjustment that you made, that you know the Commission would not make? A. Well, I am not sure. I don't know whether they would have made the adjustment on the Diesel locomotives or not. They didn't have that question up. So, you would be exercising your own judgment as to what the Commission might have done with the new factor thrown in there.

Q. Let us stop there a moment on these Diesel locomotives. Have they been delivered already? A. Oh, yes.

Q. They were delivered when? A. They were delivered during December, 1951.

Q. And you have adjusted the income for what years, on account of the receipt, in 1951, of five Diesels? A. Adjusted it back to '46, which should represent the savings that that would have accomplished in those years if they had had the Diesels then. They didn't have them, of course, but if they did—in other words, it would have put them on the basis that they are now.

Q. They actually didn't have them, did they? [104] A. Oh, no.

Q. What you did was to take into account, one fact that took place in December, 1959— A. '51.

Q. 1951, and translate that back or transfer it back and give effect to it over five years? A. That's right.

Q. And there are a good many other things which took place in 1951, such as the wage increase, in which you didn't do that, isn't that so? A. That's true. I did not attempt to adjust for either wages or rate changes. And on this theory, theoretically at least, the rate increases should be sufficient to off-set wage increases and materials price increases in the long run.

Q. Now you, in your experience over many years, have you found that that's true? Is that true in theory or true in experience? A. Well, sometimes it works out and sometimes it doesn't. Of course, very often you will have railroads complaining they aren't getting enough, but, the freight increases that they get, and the traffic increases—are not enough to take care of their increased costs. That the costs are increasing more than the rates.

Q. Didn't your partner, Miles Kennedy express that theory before the Commission back in '44 or thereabouts? [105] A. Oh, I wouldn't be surprised. I think I have expressed it myself at times.

Q. And didn't the Commission express some skepticism bearing on that theory? A. I don't recall. I think a great many people have just adopted that theory, because in theory it ought to be right. That's why the roads go to the Commission. For increases in rates. They say, "Our costs are mounting, our wages are up, the price of fuel is up, and we have to have more money to break even."

Q. Well, wouldn't that theory, if carried to the logical end, mean that, if the railroads would always have the same margin of profit? A. There are too many factors in there, Mr. Bourne.

Q. Well, isn't that the heart of the theory? A. It is. But, conditions differ so much on different roads, it would never work out satisfactorily. If it would work out over

BLEED THROUGH

the country as a whole, or a certain district, you would be pretty lucky.

Q. Then I wonder if you would take a look at your exhibit 1-A, please. It is a fact, is it not, that Exhibit 1-A does not show the amount of depreciation charges over any of the years referred to in that exhibit, nor does it show the amount of any retirements? A. That is correct. It doesn't purport to.

[106] Q. Now, will you look at Exhibit 2-A, please. Have you, before you, or have you examined, the exhibits, with corresponding numbers which were introduced at the hearing before Judge Sibley in 1949? A. Yes, sir.

Q. Would you get them out? A. (Producing papers.)

Q. Now, if you look at Exhibit 2-A, and you don't look at Exhibit 2, you might suppose, mightn't you, that so far as origination of tonnage on line and tonnage terminated on line and total tons carried, that the Florida East Coast had improved progressively to a much greater extent than the Atlantic Coast Line? A. Well, now, what—they have improved. The exhibit shows they have improved much. You put the word "Progressively". You don't want to look at every year, do you?

Q. I am putting the word "progressively" in, because my question is, if you looked at this alone, wouldn't you naturally suppose there had been a progressive trend of improvement? A. Not necessarily. I would assume just what the exhibit shows, that since 1940 and comparing 1950 with 1940, that the Florida East Coast had improved more than these other lines.

Now, if you want to pick some intermediate year I can pick one for you. I can pick 1947 now.

[107] Q. Please do, from Exhibit 2. What happened? A. Well, from 1947, taking the total tons carried, the Florida East Coast was down five percent in 1950.

Q. And what happened to the Atlantic Coast Line? A. The Atlantic Coast Line was up four percent and Seaboard Railroad was up thirteen percent. The Southern region,

excluding the *FEC* was down three percent very similar to FEC, and all class One roads were down eleven percent, or more than the FEC. Depending on what year you pick. Here we have '47 and here we have '50, but if you will look, Mr. Bourne, at Exhibit 7-A——

Q. No, I will let you talk about No. 7-A when you get to it. Will you please take 2-A. A. It all depends on the year you have. The year you end with. If you end with '51, you have a different story, because the FEC is up twenty-two and a half percent, compared with 1950. 1950 is somewhat below normal, but not as much as '49.

Q. I would like to develop for the moment, just for the moment, the facts on Exhibit 2-A, and I submit to you the fact is that with respect to the state of the things shown on Exhibit 2-A and on Exhibit 2, the Florida East Coast has gone down since 1947 and the Atlantic Coast Line has gone up. Is that correct? A. That's correct. And of course, that's as far as I [108] am concerned. I don't think that has anything to do with what we are showing you here. What we are trying to do here, as I say, as I see it, is to compare the 1950 with 1940. 1940 in turn was used when the Receivers made their estimate on which the Commission relied upon when they made their first plan.

Now, if you relate the earnings that they found, the estimated normal years earnings, that they found, with the valuation found then, and then you relate the earnings that we find, the normalized earnings that I estimate, now, with what the Commission found as a capitalization, you will see the purport of these exhibits is to compare the present time with 1940, and, it's all tied in with the earning power and capitalization.

[109] Q. This is part of showing, the purpose of which is to develop the theory that you consider that the present Plan, the Fourth Plan is not fair and equitable by a comparative analysis of the various figures that went into the First and Second Plans? A. That is one of the purposes. I am not speaking as a lawyer on this, but that is cer-

BLEED THROUGH

tainly my idea that these earnings values certainly have a very definite place here.

Q. Do you think it is presently relevant what the Receivers' estimate in 1940 was? A. In so far as the Commission determined the capitalization based on those figures.

Q. Do you read the Fifth or Sixth Report as indicating that the Commission determined any provision of the Plan in reliance upon some estimate made by the Receivers in 1940? A. Well, I wouldn't know about that, but it seems to me that it is significant to compare the relative earnings shown in two periods and two plans with relative capitalizations.

Q. And, don't you think it is equally significant in the case of the earlier plan that there was a certain amount of bonded debt and a certain amount of stock, and in the Plan now before the Court, the Fourth Plan, the bonds and stocks are those of the Atlantic Coast Line? Don't you agree that makes a difference? A. It depends on how much bonds and stock you have. That is true, you have to give due consideration to that.

[110] Q. Well, do I take it that your only purpose in introducing Exhibit 2-A was to make a comparison with reference to the Receivers' estimate? A. Oh, no, no. It also has the purpose of showing the tremendous increase in traffic even though it doesn't happen to show an increase from the last time we filed an exhibit.

Q. And, the reason it doesn't show an increase since the last time, Mr. Gordon, is because there hasn't been one? A. That is right. I told you there had been a decrease of about five per cent.

Q. A decrease in the case of the Florida East Coast and an increase in the case of the Atlantic Coast Line; is that right? A. And, a much larger increase in the case of the Seaboard Air Line.

Q. Why do you inject that? Just what has the Seaboard Air Line to do with it? A. Well, it is a lot like the Florida East Coast because that was at one time in bankruptcy

and came out of bankruptcy a few years ago and it is going to town now.

Q. That is all it has to do with it? A. Well, it is operating in the same general territory as the Florida East Coast.

Q. Would you look at Exhibit 3-A, please, and compare that with Exhibit 3, introduced before Judge Sibley and tell me what the trends have been between 1947 and 1950? [111] A. Well, the trends have been, all of the roads show further increases.

Q. And, relatively, which is doing better, the Florida East Coast or the Atlantic Coast Line? A. The Atlantic Coast Line is doing slightly better——

Q. Would you turn to Exhibit 4-A, please? A. But in—— May I continue with the comparison on it?

Q. Yes. A. (Continuing)—but not as well as some of the other roads. For example, the Central of Georgia and the Seaboard gained relatively much more than the Atlantic Coast Line.

Q. Would you turn to Exhibit 4-A, please, and compare that with Exhibit 4, introduced before Judge Sibley, and tell us what has happened so far as concerns the Florida East Coast and the Atlantic Coast Line between 1947 and 1950? A. Well, there, strangely enough, the Atlantic Coast Line decreased more than the Florida East Coast. The other roads varied quite a little.

Q. Will you turn to Exhibit 5-A, please, and follow the same procedure there? A. The Florida East Coast Railway remained in 1950 about the same as in 1947. The Atlantic Coast Line increased about four per cent, and the Seaboard Air Line increased fourteen per cent.

[112] Q. Is your theory about the Seaboard this: If the Seaboard is ahead of the Atlantic Coast Line, that the Florida East Coast is going to better the Atlantic Coast Line and catch up with the Seaboard? A. Oh, I wouldn't say that. I think there are a good many roads, when they

BLEED THROUGH

have come out of their bankruptcy or receivership, have done better.

Q. You think the road is well operated now, don't you—the Florida East Coast? A. I haven't really made any study of their operation and management.

Q. Would you look at Exhibit 6-A, please?

Exhibit 6-A shows an increase of 149 per cent in tons of revenue freight carried by the Florida East Coast alone between 1950 and 1940, doesn't it? A. That is right.

Q. That is very impressive? A. Yes.

Q. What does it show with respect to the years 1946, 1947, 1948, 1949 and 1950? A. Compared with what.

Q. Well, is the trend up or down? A. Well, it has been mixed.

Q. What? A. It has been mixed.

[113] Q. Predominantly, which would you say, through 1950? A. Well, that is a little difficult to answer, because you are talking about the first pre-war period when the traffic was very low.

Q. I asked you about 1946, 1947, 1948 and 1949, and 1950. A. Well, I know, but these percentages are all based on 1940. I thought you wanted me to compare them with 1940,——

Q. No. I want to know— A. —because if you did——

Q. (Continuing)—what to infer from looking at the figures, or what do you infer from the figures, Mr. Gordon, for the years 1946 through 1950? A. The trend—unless you also look at Exhibit 7-A, the trend is slightly down through 1949, and then it shows an upturn.

Q. Exhibit 7-A did show an upturn, did it not? A. Well, Exhibit 6-A shows an upturn in 1950.

Q. As compared with 1949? A. That is right, but not as compared with years——

Q. Prior to 1949? A. —not until you get back to 1942.

Q. On Exhibit 8-A, the very largest item seems to be car ferry, which is classed—This relates to new industries; you understand there is a car ferry which is a new industry

on the Florida East Coast? [114] A. Yes, that apparently was started subsequent to 1940.

Q. Well, hasn't there always been a car ferry, or substantially always been a car ferry on the Florida East Coast except for some intermittent times when the operation has stopped? A. No. It was reported to us in the 1940 to 1946 figures as new. Now, you will have to ask somebody in the traffic department.

Q. Somebody who knows about that? A. Yes.

Q. Very well. A. These figures, as we showed them as the source here, are based on the information furnished by the Trustee, and, in turn, furnished to him by the traffic department.

Q. Will you look at Exhibit 9-A, please? A. (Examining paper).

Q. The 1949 figure shows a very large increase over 1940, doesn't it; all of them—that is, all of the rail figures? A. Oh, yes, yes.

Q. How do 1948 and 1949 compare? A. Well, 1949 is substantially below '48. '49 was a relatively poor year for the Florida East Coast.

Q. Look at Exhibit 10-A, please. A. (Examining paper).

Q. Do you not have almost the same pattern on Exhibit 10-A that you had on one of the earlier exhibits; that is, [115] figures, so far as rail is concerned, in 1950, were below those for 1946, but a dip in 1949, and presumably an increase in 1951? Is that a fair statement? A. I think that is right, yes. The 1950 figures were or are five per cent below the 1947 figures, which were used in Exhibit 10 in the January, 1949 hearing.

Q. Exhibit 11-A, does that cover the shipments of all railroads in Florida? A. That is right.

Q. Exhibit 12-A. How does the record for September, 1949, as shown in Exhibit 12-A, compare, let us say, with September, 1946, or September, 1947, or September, 1948? A. Now, you are talking about the air lines.

BLEED THROUGH

Q. No, I am talking about the rail. A. Well, those rail figures, as I explained, are all years. Those months are simply put in to cover the air figures.

Q. Oh, well; all right, whatever the figures are. How do the most recent ones compare with the earlier ones? A. They are substantially lower, because, as I said before, 1949 was a low year for the Florida East Coast. As a matter of fact, all of the 1949 figures for all forms of transportation are below the 1946 figures.

Q. Well, in the case of, let us say, water, 1949 was better than 1947, wasn't it? A. That is right. We didn't use 1947 on the last [116] exhibit. We used 1946.

Q. Well, we are using this one on this. A. All right.

Q. Now, do you think it is fair to characterize Exhibits 13-A, 15-A, 16-A, 17-A, 18-A, 19-A, 20-A, 21-A and 22-A, as being more in the nature of general information or background exhibits relating to population, farms, farm incomes and such things? A. Well, we might characterize them as background exhibits, but I think they are important in this respect that they show the traffic potentialities, the sales potentialities in this country which is growing all the time, and, incidentally, if you would like me to go through and show you the change from 1947, say, which we used in the hearing three years ago and at the present time on those exhibits, you will find that there has been a gradual growth since that time, and I think that that growth eventually will be translated into more traffic for the railroads in Florida, and that the Florida East Coast should get their share of it, and I didn't, or wouldn't classify them as merely background exhibits, because I think they have a lot of important economic data showing the potentialities available and the growth of the area generally economically.

Q. Well, let us stop for a minute on Exhibit 17-A. Would you agree with me that a table showing population changes in terms of percentages, between 1940 and 1951, is a highly pre- [117] carious thing on which to make any, draw any inference whatever as to the earning power of a

railroad? A. I certainly wouldn't pick just one factor. That is why I introduced so many exhibits.

Q. You are familiar with the territory served by the Long Island Railroad, aren't you? A. Yes, sir.

Q. Is that growing very rapidly in population? A. Yes, I believe so.

Q. And is not the situation of the Long Island Railroad currently so serious that it can't earn enough to pay its real estate taxes? A. Yes, that is true.

Q. You wouldn't expect a Judge or a Court to draw any very strong inferences from Exhibit 17-A, would you? A. I would think that he should consider it in connection with all these other factors that I have introduced here, and I should think he should also bear in mind that the Florida East Coast has no commuter trains.

The Court: Has no what?

The Witness: Has no commuter trains. That is what is the undoing of the Long Island.

By Mr. Bourne:

Q. Would you look at Exhibit 25-A, please? A. (Examining paper).

[118] Q. When you were on direct examination, I think Mr. Scott suggested some questions with respect to the last sheet. Actually, isn't it pretty safe, if you want to deduce anything from all the sheets, simply to go to the last sheet and look at the summary? A. Well, that summarizes it if you are interested in the years these increases have taken place, and in looking at the progressive changes in the traffic, you will find them all listed here by years from 1940 to date for the important commodities; for each of the important commodities.

Q. Now, I would like to have you limit your answer to this, if you will, please, to the question that I am going to put to you which is going to relate to the Florida East Coast and Atlantic Coast Line, and maybe you will be asked

BLEED THROUGH

on redirect examination a question about other railroads, but will you tell me what the last sheet, the recapitulation, shows about originated traffic on the Florida East Coast and the Atlantic Coast Line, commencing, let us say, in the year 1946? A. On the originated traffic?

Q. Yes. A. We are now talking about the last sheet of Exhibit 25?

Q. That is correct. A. The Florida East Coast traffic is lower in 1950 than it was in 1946. In fact, the trend is generally decreasing [119] through the period except that it shows a slight recovery in 1950.

Q. It is lower in 1950 than in any of the years 1946 through 1948, is it not? A. It is lower than any of those three years; that is correct.

Q. What about the Atlantic Coast Line? A. The Atlantic Coast Line shows, from 1946 to 1950—well, it shows—It is up one year and then down, and then down some more and up again, so that there is no marked trend.

Q. It is up about one thousand—one million tons since 1946, isn't it? A. Yes; that is right.

Q. These figures that are down at the bottom that show percentages over 1940,—it really does make a tremendous amount of difference what base you use when you calculate a percentage, doesn't it? A. Oh, yes.

Q. I mean, if— A. (Continuing) I have explained the reason for using 1940. Now, if I had taken 1939, another prewar year, I would have gotten a different percentage, but, generally speaking, the use of the year 1939 would have been even more favorable.

Q. And if you had taken 1946, it rather looks as though it would have shown the other way, doesn't it? [120] A. Well, 1946, after all, was the first of the post-war years. We were still almost in the war period there, and we were moving out of it, and it is true that 1946, I think, was partly a hang-over of the war traffic, as far as the F. E. C. is concerned.

Q. Now, look at the last sheet on Exhibit 26-A, please, and I will ask you whether what you have just said about

25-A isn't near enough, for our present purposes, true of the last sheet of Exhibit 26-A: near enough the same? A. Well, no, I think that would be stretching it a little.

Q. You do? A. Yes, sir, because, after all, 1946, on the Florida East Coast, was 2,963,000 and in 1950 you are back up to 2,886,000.

Q. Almost back where you were? A. Yes, as far as the Atlantic Coast Line is concerned.

Q. The increase is larger there? A. The increase is larger there, yes, sir. But you— Well, you don't want me to comment on that, do you?

Q. I don't want you to be too exact about it. Now, would you look, please, at Exhibit 27-A. A. (Examining paper.)

Q. I want to limit my questions to items bearing on your differences with the Commission. Let me ask you this [1211] preliminary question: It is true, isn't it, the Commission made a number of adjustments and the net effect of the Commission's adjustments was to make the Florida East Coast's earnings considerably larger than they would have been if the adjustments hadn't been made? A. That is correct.

Q. The only question at issue has been, and apparently still is, as to whether they shouldn't have made even more or less larger ones? A. That is right. That is true, except in one year. In one year, I thought they made too large an adjustment.

Q. You are talking about what year? A. The year 1950.

Q. In 1950, they made the adjustment on the rail program on the basis of the record before them, didn't they? A. Oh, yes. I am not criticizing them, but you asked the question as to whether or not these adjustments—.

Q. You are correct. You have reduced the rail adjustment for 1950, because when you prepared this, you knew the actual expenditures, whereas the Commission had to operate on the basis of estimated expenditures? A. That is correct. I so stated in my direct examination.

BLEED THROUGH

Q. Now, you were at the hearing, in the hearing room at least, in August, 1950, weren't you, Mr. Gordon? A. I was there a part of the time. I wasn't at the July [122] hearings when that first exhibit went in, that Exhibit 407. I was down there, as I recall it, for a day or two in the August hearings, but I didn't hear—I didn't stay to hear all of the testimony.

Q. Well, did you hear the testimony about these rail adjustments? A. I heard a part of it.

Q. Did you look at the exhibits? A. I looked at some of them, and I didn't have enough information to really get what Mr. Ormond was driving at, at that time.

Q. You came down there at the instance of counsel for the Lynch Interests? A. That is right.

Q. That was a subject matter of the testimony at both the hearings in July and the hearings in August, wasn't it? A. I believe so. I wasn't at the July hearings. I was in Germany at that time.

Q. But you were there for the August hearings? A. Yes, sir.

Q. Or, a part of them, at least? A. A part of the August hearings, yes.

Q. Your chief difference with the Commission related to the rail, which you have explained in detail; isn't that correct? You think the adjustment, or the normalization, or whatever [123] you are pleased to call it, should have been on a 221,648 basis as compared with 518,856? A. That is right. I wouldn't call it that.

Q. I don't know the name of that, but I am talking about the same thing. A. That is right. It is a normalization adjustment, yes, sir.

Q. But, as you have explained it, Mr. Ormond had some reasons why he thought the 518,856 was correct, and he gave those reasons; is that right? A. That is right.

Q. Did you hear him give those reasons? A. Well, I either heard it or read it in the record.

Q. Now, do you think now that 221,638 is the correct adjustment? A. I think it is ample.

Q. All right. A. I think, if anything, it is more than enough.

Q. What do you think the minimum adjustment is? A. Well, this figure—I am a little hesitant, because I don't have the actual records of the cost of this rail work in the past years, and I am using estimated cost on present day prices for the future, for the next ten or twenty years.

Q. The thing I want to find out is really this: Do you now agree there ought to be a substantial adjustment, and [124] adhere to the position that this 221,638 is ample? A. I would estimate, if I had to get a more exact figure, and I say "estimate", because I don't have the exact details, that I would say a figure of 170,000 would be the minimum adjustment. And, in answer to the other part of your question, I do agree that there should be some normalization where there is a program that is being done in a relatively short period of time.

Q. Now, in Exhibit 27 which went before Judge Sibley, there wasn't any at all, was there? A. That is correct. There was no adjustment made there.

Q. At the same time, in Exhibit 27, which went before Judge Sibley, there were hurricane adjustments for 1947, weren't there? A. Yes; and for some other years.

Q. And were these amounts for 1947 that you have got now on Exhibit 27-A the same ones that were in Exhibit Number 27? A. Yes, sir.

Q. And, that was discussed, as you pointed out, in the Commission's report, wasn't it? A. Yes.

Q. Now, you have referred to a so-called non-recurring item of $140,000 in 1951, which I think you said represented unusual expenditures on the Peninsular and Occidental dock property? [125] A. Well, I said mostly that.

Q. Mostly that? A. Yes, sir.

Q. Well, now, Mr. Gordon, don't all railroads have some unusual expenses in each year like men and families

BLEED THROUGH

and schools? A. Well, all I can say to you is that this, as I said on my direct examination, that this is a non-recurring charge, which the Trustee reported as such. I would assume from that that it was a charge that they made unusual repairs, and which, in a normal year, they would not make, and that he, therefore, felt that it should be classified as a non-recurring item. I have made no study of what the normal cost of repairs to the P. & O. dock would be, and I am simply relying on the Trustees' classification of this item in that way.

Q. When you came to adjust these income accounts, did you give any consideration to the question whether there ought to be any adjustment of interest on time deposits? Did you know that the railroad's income account includes substantial interest on time deposits. A. I know they have some such items, yes.

Q. Do you have any idea how much that amounted to? A. No, not unless I look them up.

Q. Do you know what would happen to the time deposits in the event of a Plan? A. Well, presumably, they would be decreased.

[126] Q. You did nothing on that subject? A. No. No, I did not. I didn't know when this railroad was going to be reorganized, Mr. Bourne.

Q. Well, we are trying to normalize, aren't we? A. Yes.

Q. Does it make any difference how long it is going to take. I am trying to find out what is normal. A. Well, that is a question.

Q. What? A. That is a question.

Q. Do you know anything about the interest on a tax refund that was received in 1951, $153,340? A. Well, I know that the 1951, other income and deductions,—it didn't look abnormal at all.

Q. Did you go through them, one by one? A. No, but I was just using the net that looked reasonable.

Q. Well, would you agree that interest on a tax refund—? A. It is a non-recurring item.

Q. Is a non-recurring item? A. If I had known about it.

Q. You would have eliminated it, wouldn't you? A. I would have eliminated it, yes. I might say there, while you are talking about these non-recurring items, that the Trustee also reported some other non-recurring items——.

[127] Q. You can bring that out on redirect. A. You were asking about non-recurring items.

Q. I didn't have any question on that, Mr. Gordon.

Mr. Bourne: That is all.

The Court: Is there any further cross from this witness?

To which inquiry, there was no response.

The Court: All right, proceed with your redirect, if any.

Re-direct examination by Mr. Butler:

Q. What was that you were going to say about non-recurring items? A. I was simply going to point out that the Trustee also reported certain figures as the estimated decrease in 1951 revenue on account of hurricanes and floods in 1951, and additional expenses in connection therewith, and which I have not used here because of the Commission's language. The Commission felt that hurricanes and floods expenses should ordinarily not be treated as non-recurring, although they expressed doubt about the 1947 hurricane, which was of unusual severity. So, in my exhibit, I have only adjusted for the 1947 hurricane and have not adjusted for hurricanes in 1949 or 1951, or any other years.

The Court: Is that all?

Mr. Butler: Now, your Honor, I am going to have this [128] testimony of Mr. Gordon transcribed, and I want to study it, and I may want to recall him, but, for the time being, I haven't anything further.

The Court: All right. Come down, Mr. Gordon.

. . . Witness excused.

The Court: Call your next witness.

BLEED THROUGH

Mr. Adair: May we have a five minute recess, your Honor.

The Court: I think not at this time.

Mr. Adair: Your Honor indicated this morning that at some other stage of the proceedings you would hear various of the motions. I rather thought that I should call your Honor's attention to the status of a request for admissions under Rule 36, and interrogatories propounded under Rule 33 by the duPont Trustees and by the Paper Company, jointly and severally. This goes again to whether or not there is existent material evidence to support the findings of the Commission, in its Fifth Supplemental Report and in its Sixth Supplemental Report to the effect that it was incompatible to the public interest for the duPont Trustees or the St. Joe Paper Company, or whoever it may be—to control the property of the debtor.

The Court: I thought that we would hear all of the oral testimony first, get all of that in, and then take up such other matters as this.

Mr. Adair: There is only this difference, your Honor. I [129] think it should be said, so that no one will be taken by surprise, that we have gathered together what we believed to be every shred of evidence there was which might tend to support the finding of the Commission and its conclusion that it was incompatible with the public interest for the St. Joe Paper Company or the duPont Trustees to control the property of the debtor. We have put that here in some eighty odd sheets. We have served those eighty odd sheets upon the Atlantic Coast Line Railroad Company, on the 18th of January, and we have said to them, admit that this is all the evidence that there is. We have said that it is not material and is insufficient. If you say that it is not all the evidence upon which the Commission relied, and

you rely, to support this finding of incompatibility on the part of the Paper Company and the duPont Trustees, then you tell us where, in these more than seventy-five hundred pages, and five hundred exhibits or more, what this additional evidence is upon which you do rely.

The Court: Well, I want to hear all of the witnesses first; the oral testimony first.

Mr. Adair: All right, your Honor, I just want your Honor to know we are still insisting on it.

The Court: That is an argument on the law, and I don't want to get into the arguments yet.

Mr. Adair: We have been through that mill before, and we are together on it, and we are agreed that unless there is [130] substantial evidence to sustain the view of the Interstate Commerce Commission, then it must go down, both under the Constitution and the laws.

The Court: Well, I will hear you on that later, but that will come in as a matter of argument.

All right. If you have any other oral witnesses, bring them up.

Mr. John H. Bickley, having been produced and first duly sworn as a witness herein, thereupon testified as follows:

Direct examination by Mr. Turney:

Q. What is your name? A. John H. Bickley.

Q. Where do you live? A. My address is 2812 Westgrove Lane, Houston, Texas.

The Court: Before you get to that. Who offers this witness, and, in general, for what?

Mr. Turney: This witness is offered by the St. Joe Paper Company for the purpose of showing that the Plan is unfair and inequitable, generally.

BLEED THROUGH

The Court: All right.
Mr. Bourne: I didn't get the witness's name.
Mr. Turney: Bickley, B-i-c-k-l-e-y.

[131] By Mr. Turney:

Q. Did you give your residence? A. Yes, sir.

Q. All right in what profession are you engaged? A. I am engaged in private practice as a business consultant, with offices in the Bankers Mortgage Building, Houston, Texas.

Q. What is the nature of your practice? A. I offer advice and assistance to corporations, public agencies and others on financial accounting and the general operating problems of business. More specifically, I assist in financial planning.

I have made numerous property reclassifications. I have made estimates of annual depreciation rates for public utilities, and estimates of the depreciation reserve requirement.

I have also made valuations of securities in connection with corporate reoganizations, and tax matters, and valuations of properties as going concerns.

Q. What are your educational qualifications? A. I was graduated from the University of Pennsylvania in 1915. Following that, and from 1915 until 1924, with the exception of one year, I taught in the College of Business Administration, at Lehigh University, in Bethlehem, Pennsylvania. I have taught accounting, investments, security analysis, industrial managment, corporation finance, and railroad ad [132] ministration.

Q Have you had any experience upon any public regulator commissions? A. Yes, sir. Yes. After leaving Lehigh, I entered public service, and I have been with the Public Service Commission of Pennsylvania, the Public Service Commission of Maryland, the Federal Trade Commission, the Public Service Commission of Wisconsin, and the

Federal Communications Commission, in the order mentioned.

Q. And, what was the nature of your work with those bodies? A. My work in public service—I have been in various capacities. While with the Public Service Commission of Pennsylvania, I spent considerable time in reviewing records, and litigation in other cases. This involved examinations of engineering appraisals and reports, accounting and financial reports, and the making of recommendations to the Commission as to value and allowable earnings. I was chief auditor of the Maryland Commission and did the usual work of that position.

In 1928, I was engaged by the Federal Trade Commission, with the title of public utility expert, to assist in planning, organizing and directing an investigation of the electric gas utility industries in the United States. My chief business with that Commission was to prepare a questionaire [133] report form for responses from the industry. I then set in motion the field examinations in connection with accounting and the financial matters of holding companies, and their associate operating, engineering, construction and financing companies. I have supervised, in varying degrees, examinations of practically all the major public utility holding company systems in the United States.

Q. Was that in connection with the so-called "death sentence" act? A. No, sir. The investigation was made under a Senate resolution. It was known as the Walsh Resolution, but some folks say that, as a result of that investigation, the public utility holding company act was enacted and the Federal Power Commission Act was enacted.

Q. What was the nature of your work with the Wisconsin Commission? A. I was director of the Department of Accounts and Finance. In that capacity, I had supervision over all financial and accounting matters coming under the jurisdiction of the Commission. That included estimates

BLEED THROUGH

of property value and all earnings in connection with the security issues, mergers, consolidations and property purchases and sales.

Q. Now, since you— Well, how long have you been in private practice? A. Since September of 1937, with the exception of a period of two and a half years when I served as President of the [134] Louisville Railway Company. As President of that company, I engaged in private practice, to a limited extent.

Q. Have you had occasion, in that practice, to value the securities and the properties of railroads? A. Yes, sir, on two occasions. The first was for the Trustee of Midland United Company, a corporation in bankruptcy. The Midland United controlled the Chicago, South Shore & South Bend Railroad Company, a transit company or railroad operating between Chicago and South Bend.

The second occasion was for the Commonwealth of Kentucky. The Commonwealth had made a tax assessment against the Southern Pacific Company, and I was employed by the Commonwealth to make an appraisal of the portfolio of the Southern Pacific, inasmuch as the Southern Pacific was both an operating company and a holding company for other transportation properties.

The Court: I think that gives us a pretty general idea of his qualifications. Let us get down to the immediate question.

By Mr. Turney:

Q. Were you employed by the St. Joe Paper Company to make an investigation with respect to the Plan of Reorganization of the Florida East Coast contained in the Fifth and Sixth Supplemental Reports of the Commission? A. I was.

Q. When? [135] A. It was late in September of last year, I think about the 28th of the month.

Q. You mean, 1951? A. Yes.

Q. What was the nature of the investigation which you made? A. I was retained to make a study or review of the past earnings and operations of the Florida East Coast Railway Company; to make an estimate of its prospective future earnings, and to express an opinion as to the fairness and equity of the Interstate Commerce Commission's Fourth Plan.

Q. And, have you made such an investigation? A. I have.

Q. Now, I have handed you five sheets of paper marked for identification Exhibits A to D-1, inclusive. A. Yes, sir.

Q. I will ask you whether or not those exhibits were prepared by you as a result of this investigation? A. They were prepared by me, or under my direction.

Q. And, do they relate to the first phase of your investigation? A. They do.

Q. Which dealt with the provisions of the Plan and its effect? A. That is correct.

[136] Q. Now, will you turn to Exhibit A for Identification and tell us just what that exhibit shows? A. The exhibit is captioned "Capital Expenditures made by Trustees for which Court Liens have been Enforced by the Court." These are the liens prior to July 11th to 14th, 1950.

The first amount column, the first dollar column, reports the total capital cost, including materials and supplies on the different kinds of property, including Diesel locomotives, passenger cars, general additions and betterments.

Q. Will it include the matters covered by the orders which are listed in the first column? A. That is correct.

Q. Now, what was the total capital cost of the orders prior to July 11, 1950? A. The total capital cost was $9,587,268.00.

Q. And, toward the end of the year, or to the end of the year 1951, how much depreciation had been accrued

BLEED THROUGH

on that property? A. That amount is shown in the second amount column, and it is $989,552.00.

Q. And, the present book value as at December 31, 1951, is what? A. $8,597,716.00.

Q. Now, has that entire capital cost been paid by the Trustees? [137] A. No, sir, because at December 31, 1951, there were outstanding against the equipment enumerated in the upper part of the exhibit, equipment obligations in the amount of $3,338,280——

The Court: $3,336,280.

The Witness: $3,336,280. As a result the cash investments or the cash expenditures made by the Trustees on the property was $6,250,988.00.

By Mr. Turney:

Q. Now, at what rate per year are the equipment obligations being reduced? A. These particular equipment obligations are being reduced at the rate of $526,160 a year.

Q. And, if this proceeding— If the Trustees continue in control for approximately six years, will the entire investment be paid? A. Yes, sir, if—when all of the equipment obligations are paid off, then the cash investment by the Trustees in this property will be at $9,587,268.00, and the investment will increase progressively as the equipment obligations are retired.

Q. And, will that be partially offset by depreciation which has accrued from January 1st of this year? A. That is correct.

Q. So that we may be clear about it, does this exhibit [138] include any court liens which were entered by order of the Court subsequent to July 11, 1950? A. No, sir.

The Court: That is the date when the Commission approved the Plan?

Mr. Turney: No, your Honor.

The Court: 1950. What is the significance of that question.

Mr. Turney: In the Commission's plan, they provide that any liens imposed by orders after that date shall be paid by the Coast Line in addition to the cost of the Plan. That is the cut-off date between those to be deducted from the First Mortgage Bonds or the cash, and those to be paid by the Coast Line.

By Mr. Turney:

Q. Will you turn to the second statement, marked for Identification Exhibit B, and tell us what this is. A. Exhibit B sets forth the expenditures under the rehabilitation reserve provided in the Plan of Reorganization certified in the Commission's Fourth Supplemental Report, dated March 25, 1948.

Q. Now, that is the Plan which the Court has said will be called the Third Plan; is that correct? A. That is right.

Q. Go ahead. Are the items shown in the first column, [139] amounts included in the reserve taken from the pages of the Interstate Commerce Commission reports, cited in the Footnote A? A. They are.

Q. Now, what do the figures in the second column represent? A. Well, I don't think I have said anything about the first column yet.

Q. I am sorry, sir. Proceed. A. In its Third Plan, the Interstate Commerce Commission required that there be set aside a reserve totaling $7,025,551.00.

Mr. Bourne: Your Honor, I don't want to interrupt this course of examination, because I am going to be quite prepared to meet it when the time comes, but when they come to an interpretation of the Third Plan—Now, we are passing on the Fourth one. For purposes of comparison, I propose to

BLEED THROUGH

argue as to what the Third Plan meant if that ever comes to be an issue here at all. I simply don't want to sit by and have either Mr. Turney or Mr. Bickley interpret, and seem to acquiesce in the interpretation. Now, if it can be understood that I am registering a general exception of any interpretation of the Third Plan, I can be further quiet.

The Court: All right. Let the record so show. It is overruled, and I will allow what he has to say about it.

The Witness: Shall I continue?

[140] By Mr. Turney:

Q. Will you proceed, please? A. In its Fourth Supplemental Report, in which the Third Plan was set forth, the Interstate Commerce Commission required that there be set aside a reserve of $7,025,551 to cover——

Q. Pardon me just a moment. Let me interrupt you there. I neglected to ask the question, and should have done so, your Honor, on his qualifications, because it becomes proper at this time. Are you a certified public accountant? A. Yes, sir, I have been certified in the States of Illinois, Wisconsin and Maryland.

Q. Now, when you state what was provided, the reserve that was provided, was that your interpretation as an accountant? A. It is my interpretation as an accountant.

Q. And, not as a lawyer or judge? A. Certainly not.

Q. Very well. Proceed, please.

[141] By Mr. Turney:

Q. Very well, proceed. A. The second amount column shows the expenditures that were made to December 31, 1951 against the rehabilitation reserves.

Q. What does the third column show? A. The third column shows, line 16, that the expenditures against the reserves had exceeded, by $2,419,577.00, the amount of the reserve.

Q. The amount of those expenditures is $9,445,128.00, shown on line 16 of the second column? A. That is correct.

Q. Now, were all of the items mentioned in the reserves, computed? A. No, sir. The bridges shown at line 6 had not been started, and I understand they are not to be constructed. The new stations and terminals appearing at line 7 had not yet been started.

Q. Now, Mr. Bickley, will you turn to your Exhibit marked for identification Exhibit C and preliminary to that question I will ask you whether or not you were requested to make an accountant's analysis of the difference between the consideration to be paid by the Coast Line under the Third Plan and that to be paid on the Fourth Plan? A. I was.

[142] Q. Does this statement present the result of that analysis? A. It does.

Q. Now, will you please tell me why you used the date of December 31, 1951 as shown in the caption? A. Some date must be selected for a comparison of the two Plans. It must be a common date. The assets and the liabilities involved are changing constantly, and if a comparison were made of the two Plans as of different dates, there would not be, in fact, a comparison of the conditions that obtain when a Plan would be consummated.

I have selected December 31, 1951, because it was the latest calendar year and the latest month before January, which has just passed.

Q. Now, what does this exhibit show, or rather what does your analysis show as to which Plan may make the highest consideration when they are compared, at a common date—or, the greatest consideration, is the better word. A. The statement shows, at line 19, that the net consideration payable by the ACL—Atlantic Coast Line, was $2,761,436.00, more, under the Third Plan than it is under the Fourth Plan.

BLEED THROUGH

Q. Now, in the caption, the first column reading "Under the Third Supplemental Report" shows there under the Third Plan, in view of the Court's discussion—[143] A. Yes, sir.

Q. And the second column, should be read together under the Fourth Plan? A. Yes, sir.

Q. Now, at Page 217 of Document 938 of the Commission's Report, a table is set forth which indicates—in which the Plans are compared which indicates upon its face that in par amounts of securities, in cash, the Fourth Plan provided for a consideration of $11,246,345.00 more than the Third Plan. A. May I correct that, Mr. Turney?

Mr. Turney: Yes.

A. It was the Fifth Supplemental Report the Commission made a comparison of a Plan then proposed, of all previous Plans——

The Court: Let me get the page of the report you are talking about. Give it to me again, please.

Mr. Turney: Let me check it, please.

The Court: Yes. This Commission's Fifth Supplemental Report that you are referring to.

Mr. Turney: It's a table shown in the Fifth Supplemental Report, Document 938, Page 217.

The Court: Commission's Fifth Supplemental Report, Document 938, Page 217. You have the date of it there?

Mr. Turney: The date is July 12, 1951.

The Court: That is the one that bore the Fourth Plan [144] originally. Document what?

Mr. Turney: 938, Page 217.

Mr. Bourne: May I have the question again, please?

The Court: That document is in the previous record here.

Mr. Turney: I would like to withdraw that last question. I see that I looked at the wrong one.

By Mr. Turney:

Q. What is the difference between the Fourth Plan and the Third Plan as shown by the Commission in this report at the page to which I call your attention? A. The table to which you have referred would indicate that there would be $8,484,909.00 more consideration payable by the Coast Line under the Fourth Plan than under its Fourth Plan.

Q. Now, your exhibit shows that, as you interpret it there is $2,761,436.00 less, is that correct? A. That is correct.

Q. And that makes a difference between the Commission's statement and your statement of how much? A. $11,246,436.00.

The Court: Where did you get your first figure of eight million and something? In the Commission's tabulation here. I don't see that here.

A. That appears, Your Honor, in a table——

The Court: On Page 278?

[145] A. Yes, sir.

The Court: I am looking at that table but I don't see the eight million dollar figure.

A. Do you see an item of $51,814,086.00?

The Court: Yes, I see that.

A. And a figure under the Third Plan of $43,329,177.00?

The Court: Yes. Oh, yes. So, that eight million is the difference between those two?

A. That's right, sir.

The Court: Let me get that marked. That is the Third Plan. And the Fourth Plan. All right, go head.

BLEED THROUGH

By Mr. Turney:

Q. Now, have you attempted——

The Court: Just a minute. Give me that eight million figure again?

A. $8,484,909.00.

The Court: All right, I just wanted to have that amount before me. Go ahead.

A. Now, the other figure, which is the difference in the consideration which I show in the amount of $2,761,436.00, appears at line 19 in Exhibit 3—Exhibit C, the last column.

The Court: I see those figures.

By Mr. Turney:

Q. Now, because one is a plus, and the other is a minus, you have to add them to get the difference between them? A. That's correct.

Q. And that difference is how much? A. $11,246,345.00.

Q. Now, can you tell us in how many items that difference is made up. A. The difference is made up of four items. Shall I continue?

Q. Yes, continue. A. The first is the Court liens which the Interstate Commerce Commission failed to deduct from the consideration payable by the Coast Line under the Fourth Plan. The amount is $5,261,436.00, shown at Line 4, Exhibit C, the last column.

The second amount is the additional cash reserve over and above the rehabilitation program set forth in the former plan in the amount of three million dollars and this is shown in Exhibit C, Line 15.

The cash reserves for rehabilitation.

The third amount is an increase in cash working capital under the Fourth Plan. This, too, is shown on Exhibit C as Item 16, the last column. Five hundred thousand dollars.

Q. And what is the fourth figure? A. The fourth is the difference in the amount of equipment obligations at the date of the former plan, which such obligations were $2,829,177.00 and the amount of such obligations at the date of the present plan, when they were [147] $5,314,086.00.

The Court: Where is that shown on Exhibit C? What particular line?

A. Under equipment——

The Court: What line?

A. Neither of these figures——

The Court: Are there in specific form?

A. No, sir. Because Exhibit C is predicated on December 31, 1951 as a consummation date.

The Third Plan, when the equipment obligations were $2,829,177.00, was of a much earlier date, and the $5,314,086.00 was the amount of the equipment obligations when the Commission set up its Fourth Plan.

Now, if I recall correctly, the $2,829,177.00 and the $5,314,086.00, may appear in the table in document 938.

Q. Well, now, wait a minute. I want to get those figures again, before we go on. Equipment obligations assumed under the Third Plan show in this table on Page 217 as $2,829,177.00, is that correct? A. That is right, sir.

Q. That is under the Third Plan? A. I believe the next column——

Q. The next column shows equipment obligations assumed under the Fourth Plan at $5,314,086.00? A. Yes, sir. And the difference between those two is [148] $2,484,909.00.

Q. Well, now, are those figures shown on your Exhibit C? A. No, sir, because the figures in Document 938 are all of different dates. Whereas in Exhibit C, there, it is

BLEED THROUGH

assumed that the consummation date would be December 31, 1951 and the equipment obligations then were different from either of the other two amounts referred to.

Q. What I am trying to get into my mind at the moment is how that increase in those equipment trust obligations can result in a decrease in compensation to the 5% Bondholders under the Fourth Plan. A. Well, that's just the point, your Honor. It shows the fallacy of comparing two plans as of different dates. When the Fourth Plan was set up, the equipment obligations were over five million dollars. When the Third Plan was set up it was—they were less than three million dollars.

> Mr. Turney: May I interrupt there and ask a question that may clear it up? Under both Plans the Coast Line was to assume the outstanding equipment obligations at consummation.

A. In whatever amount they were.

Q. So, if the two plans were consummated as of a common date, by the provisions of each, the equipment obligations would be the same? A. That's the point. If the Plan had been consummated shortly after the Fifth Supplemental Report was issued, then [149] the obligations to be assumed by the Coast Line would have been the $5,314,000.00, rather than the $2,829,000.00. And if a Plan had been consummated at the close of last year, the equipment obligations would have been in the amount stated at line 12.

Now, I should like to point out, ordinarily, that when this exhibit was prepared, we did not have the balance sheet of the Florida East Coast Railway for December, 1951. That balance sheet shows equipment obligations in the amount of something like $5,100,000.00. Now, that change in the equipment obligations would not change in any respect—the difference is shown here. Because, the equipment obligations, what they amounted to, would be shown at the same amount in the first two amount columns.

Q. Now, that increase in equipment obligations was due to the five diesel locomotives? A. Yes, sir.

The Court: What is the amount of that increase there, or have you got it computed? The difference between two million, eight and five million, three?

A. That difference is $2,484,909.00.

Q. The equipment obligations were that much more at the time of the putting out of the Fourth Plan and at the time of the putting out of the Third Plan? A. Yes, sir.

[150] Q. Well, now, I am still having a little trouble seeing how that will take anything away from the 5% Bondholders if the Atlantic Coast Line assumes the equipment obligations in either instance. I would like to hear a little more about that. In both instances, I should say. In both instances, they assuming the equipment obligations. How would the fact that they are more under the Fourth Plan than the Third, take anything away from the 5% Bondholders? A. Relatively, there would be no change, and that is what I am trying to explain. Both plans provided that the Coast Line should assume the equipment obligations outstanding at the consummation, regardless of the amount of obligations. But my point is that when a comparison is made of the total consideration by Coast Line under the Third and Fourth Plans, and there is an indication that the consideration has been increased by $8,485,000.00, I believe a wrong impression can be gained. Now, the fact of the matter is that if the Third Plan had been consummated at the time of the Fourth Plan when the equipment obligations were $5,314,000.00 more than they were at the time the Third Plan, then the difference, or the apparent increase in the consideration would not have been $8,484,000.00, but $2,484,000.00 less than that amount. In other words, the difference would have been reduced from $8,484,909.00, to six million dollars.

Q. Now, is it not true that since the same provision with [151] respect to the assumption of the equipment obliga-

BLEED THROUGH

tions occurs in both plans, that when you compare the two plans there will be neither gain nor loss of that item? A. They will be offset.

Q. That is, the Court was right. It didn't make any difference, but the Commission's statement shows it makes a difference of two and a half million? A. Yes, because when you compare the total consideration given in the Commission's Fifth Supplemental Report, it appears as an increase——

Mr. Bourne: I think we are going far afield. The Commission's table is here. I don't see why it helps to——

The Court: He is entitled to give us his analysis of it. Go ahead.

A. Well, the point I should like to make, your Honor, is simply this: That you can't compare two plans as of different dates and there is nothing that demonstrates that more clearly than these equipment obligations. They are changing almost from month to month.

By Mr. Turney:

Q. Now, Mr. Bickley, on Line 4 you show an item, less Court liens of $5,261,346.00. I will ask you if that's the same figure that somes from Exhibit A? A. Yes, sir.

Q. After depreciation? [152] A. Yes, sir, that is shown at the bottom of the last column of Exhibit A.

Q. Now, does that include the equipment lien under the Court Order respecting the five diesel locomotives? A. No, sir.

Q. Do you have the amount of additional orders subsequent to July 11, 1950, which are not included in any of your statements? A. Yes.

Q. What is that amount? A. Well, there was an order for five diesels of, I believe, nine hundred thousand dollars. And there was an order for general additions and betterments for the year 1951. The amount of it, I don't recall.

Q. Well, will it refresh your recollection to ask you if the sum of those additional orders since that date are the capital expenditures—not the expenditures, are the capital liabilities? A. Oh, it's $1,797,973.00.

Q. Do you have that figure there? A. Yes, sir, the additional orders since July 1950 total $1,797,974.00.

Q. Now, that capital liability is represented by expenditures, total expenditures of how much? A. $518,070.00.

[153] The Court: I think you said "since July 1950" a moment ago. I think you mean since July 1951.

Mr. Turney: No, July 11, 1950, your Honor. That was the date of the hearing before the Commission.

The Court: Oh, yes. 1950.

By Mr. Turney:

Q. Mr. Witness, I think you should correct this by putting something in the second line there—you see it reads "The amount of any lien finally imposed to be paid in cash" —do you want to correct that? A. Yes, sir.

Q. How? A. There should be inserted after the word "imposed" the following:

"Under orders prior to July 11, 1950."

I believe I have mentioned the total authorization as $1,797,000.00 includes the nine hundred thousand for the five new diesels.

The Court: For what? I didn't hear that last.

A. For the five new diesel locomotives which were delivered late in December.

The Court: Well, now, we are running a little past time, and I think this is a good stopping place and we will stop here until tomorrow morning.

The Court: Court will be in recess until ten o'clock [154] tomorrow morning.

BLEED THROUGH

. . . And thereupon Court adjourned to be reconvened at 10:00 o'clock in the forenoon, Tuesday, February 5, 1952.

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[155] . . . And at 10:00 o'clock a. m., Tuesday, February 5, 1952, Court reconvened pursuant to adjournment of the preceding session, and the following further proceedings were had:

The Court: All right. Recall the witness and proceed.

Mr. Walton: Before the testimony of the witness is resumed, I should like to make a statement supplementing my statement of representation yesterday.

The Court: All right.

Mr. Walton: Discussions which were in progress prior to the time that the hearing began resulted in my being employed to represent an additional one million dollars par value of the five percent bonds held by a group of bondholders.

The Court: Well, that is the F. K. Conn group?

Mr. Walton: No, sir; this is the Welbon group.

The Court: Oh, yes, Welbon. They are going to join the Welbon group?

Mr. Walton: Yes, sir.

The Court: That will make that group $2,220,000.00.

Mr. Walton: That is correct, sir.

Mr. Bourne: May I ask whether those are the ones that were referred to as having been under option?

The Court: Well, you can ask.

Mr. Walton: I am prepared to state they are not.

The Court: Proceed, gentlemen.

[156] Mr. John H. Bickley, having been previously produced and first duly sworn as a witness herein, was recalled to the witness stand and thereupon further testified as follows:

Further direct examination by Mr. Turney:

Q. Mr. Bickley, referring again to your Exhibit for identification C, upon the face of the two orders, how much increase was there in mortgage bonds of the Fourth Plan over the Third Plan? A. $6,125,000.00

Q. Now, how much decrease was there in the cash to be paid by Coast Line? A. $125,000.00

Q. What was the net increase in bonds and cash of the Fourth Plan over the Third Plan? A. Such net increase was six million dollars.

Q. Now, was there any change in the two plans with respect to the preferred stock, the common stock, and the equipment obligations? A. There was no change in the capital stock and there was, in fact, no change in the equipment obligations, although the amount of such obligations outstanding as of the dates of the two plans was different.

Mr. Bourne: Does that question relate to the attributes [157] or to the amount?

Mr. Turney: It relates to the obligation of both plans as of a common date.

Mr. Bourne: You mean as to the attributes, or the description?

Mr. Turney: I don't know what you mean by "attributes".

Mr. Bourne: Well, there was a change in the preferred stock. I don't want to have the witness make a mistake.

The Court: Proceed with your examination.

BLEED THROUGH

By Mr. Turney:

Q. Mr. Witness, was there any change with respect to the provisions for the payment by the Coast Line in the Fourth Plan of Court liens which may be ordered by the Court for improvements which may be made under lien order? There was a change in the way the Commission went about it, as I understand the plans. In the Third Plan, the Court liens were to be added to the consideration; in the Fourth Plan such liens as were finally imposed by the Court were to be deducted from the cash, after providing for the payment of the $3,811,000.00 of bonds which had been re-acquired, but that would leave very little cash to cover the liens, and so the Commission directed that such liens that were finally imposed should be deducted from the First Mortgage Bonds.

Q. Now, assuming only for the purposes of the question that the amount of the residual value of the improvements made [158] on the Plan, on orders made prior to June the 11th, 1950 would be the amount which might be adjudicated under the lien orders, what would the difference be in dollars between the two Plans after deducting the liens you mentioned, in the amount of $5,261,436.00—is that the amount of those liens? A. Yes, sir; as shown in Exhibit A.

Q. Now, let us stop right there. What difference is there with respect to the amount of cash to be paid by the Trustees to the Coast Line for additions and betterments in the future? A. There was an additional cash reserve under the Fourth Plan of three million dollars as shown in Exhibit C.

Q. Now, what addition was there in cash working capital to be paid by the Trustees to the Coast Line, of the Fourth Plan over the Third Plan? A. That amount is five hundred thousand dollars, again, as shown by Exhibit C, Line 16.

Q. Now, taking the sum of the two additional payments by the Trustees, and the deductions of the liens of $5,261,000.00, what is the total difference of the Fourth

Plan under the Third Plan, taking those and disregarding for the moment the six million dollars? A. These additional amounts total $8,761,436.00.

Q. Now, what is the net amount of the Fourth Plan under the Third Plan on that computation? A. With the additional payments of $8,761,000.00 against [159] the apparent increase in consideration of six million dollars, the reduction in the net consideration payable by Coast Line under the Fourth Plan was $2,761,436.00, which is the amount shown in Exhibit C, Line 19, the last item.

Q. Will you please turn to your Exhibit D for Identification, and as a preliminary question, I will ask you whether or not at Page 223 of the Fifth Supplemental Report, being Document 938 in this Court, the Commission found that the expenditures for which liens have been imposed were fully reflected by the additional value placed upon the property by the Commission in that report? A. That is what I understand.

Q. Have you investigated to determine the validity of that conclusion? A. Yes, sir. I have prepared a statement showing the extent to which additional consideration payable by Coast Line under the 1951 Plan—which was the Fourth Plan—fails to cover the net expenditures for improvements.

Q. And that is the exhibit marked for identification B? A. Yes, sir.

Q. Now, in the first line of that exhibit, do you show the valuation of property "In Coast Line securities" of the two Plans? A. That is done.

Q. And that difference is six million dollars? [160] A. That is the six million dollars which we have just been discussing.

By the Court:

Q. That would be cash, and Atlantic Coast Line—four million dollars cash—value of debtor property in cash and Coast Line securities?

BLEED THROUGH

Mr. Turney: Your Honor is correct.

The Court: Four million dollars cash. All right.

Mr. Turney: However the Commission phrases it, "In Coast Line securities" but it should have been cash and securities.

The Court: Yes, all right.

By Mr. Turney:

Q. Now, is it possible to compare in making this investigation as to the extent to which the improvements represented by liens are reflected, to compare the par value of securities? A. No, sir; because when a measurement is made of the additional consideration, if any, then all amounts should be placed on a cash basis; and that is the purpose of Exhibit B.

Q. Now, what basis did you use to place the first mortgage three and three-quarter percent bonds under the Fourth Plan on a cash basis? A. The fourteen million dollar par amount of the first mortgage bonds were priced at 96 per one hundred dollar principal amount. That is the value placed upon these bonds by the Commission in its Fifth Supplemental Report. When the [161] fourteen million principal amount is priced at 96, the value becomes $13,440,000.00.

Q. And that is shown in the second line? A. Yes, sir.

Q. Now, how did you obtain the market value of the First Mortgage three and a half percent bonds which were issuable under the Third Plan? A. I determined the market value of the three and a half percent bonds on the basis as the same effective yield as obtained on the three and three-quarter percent bonds. Under the Fourth Plan the First Mortgage Bonds carried an interest rate—a coupon rate of three and three-quarters percent. I found, by reference to bond tables, that a three and three-quarter percent bond maturing in twenty-five years and priced at 96 gave an effective yield of 4%. By reference to the same bond tables,

I determined the price to which a bond with a coupon rate of three and a half percent, but having a yield of 4%, would amount to, and that is the $92.14 per one hundred principal amount.

Q. When you price that out, the amount of $12,438,900.00 shown in the third line results? A. Yes, sir. When the $13,500,000.00 of three and a half per cent bonds under the Third Plan, shown as Item 6 of Lines—of Exhibit C is priced at $92.14, the aggregate amount is $12,438,900.00.

[162] Q. Now, what price did you use in ascertaining the market value of the income mortgage bonds and the preferred stock and the common stock? A. For these securities, I used the prices stated by the Commission in its Fifth Supplemental Report.

Q. Inasmuch as those securities were substantially the same, does it make any difference, particularly, the market price which you use? A. No, I don't think it does.

Q. Now, what then, is the total difference in the excess of the Fourth Plan over the Third Plan in market value of securities? A When measured by the market value of securities, the increase in the consideration under the Fourth Plan was $5,501,100.00, as shown at Line 7 of Exhibit B.

Q. Now, with respect to the net cash payable by the Coast Line, what is the situation with respect to the two Plans? A. Under the Fourth Plan there was $3,625,000.00, less cash payable by Coast Line then under the Third Plan. That is shown as—at Line 8 of Exhibit D, and is taken from Lines 20, 21, and 22 of Exhibit C.

Q. You explained that computation yesterday. Now, when that credit is applied to the increase in Market value of bonds, what is the net increase of Coast Line securities and cash of the Fourth Plan over the Third Plan, giving no consider- [163] ation to liens? A. The increase at that point in the cash value payable by Coast Line as measured by market prices of securities is $1,876,100.00, shown at Line 9 of Exhibit B.

BLEED THROUGH

Q. Now, on Line 9, is there an error in the description of that Line? A. Yes, sir. There should be substituted for the words "net increase in" the word "total", so that it will read "total cash value payable by Atlantic Coast Line" and the increase as shown in the last column.

Q. Now, will you explain what the purpose of the lines 10 to 20 shown at the bottom of this exhibit is?

The Court: You say that Line 9 should read "total what"?

The Witness: Cash value.

The Court: Total cash value?

The Witness: Payable by Coast Line.

The Court: Now, before we get started again, I notice in a computation shown in Line 6 of Exhibit B you value ACL common stock at 64. It is selling now at 83 to 85, so I am advised yesterday.

The Witness: On late last week it sold at 85. I believe it opened yesterday at 85 and closed at 83. That is the highest price on Coast Line common for quite a few years. But the $64.00 per share which I have used is the value placed on the common by the Interstate Commerce Commission in its [164] Fifth Supplemental Report.

The Court: That is the Commission's value?

The Witness: Yes, sir.

The Court: Well, how long has it been since it was actually selling at 64? A few months back it was along in the 70's, wasn't it? 73, 74, along in there?

The Witness: I can give you this information, your Honor: In 1951 the low was 61¾. The high was 82. In 1950, when the Commission made its valuation, the low for that year was 41 and the high was 70½. Going back through the comparatively high market price period of from 1945 through '51, I find that the average of the low for the years and the high for the years was $57.00. Taking a longer period——

The Court: Wait a minute. You say the average high and the average low was 57?

The Witness: Yes, sir. I took the averages of the low's and the high's of the individual years, and averaged those.

The Court: I see; so as to get one figure, the average of the high's and the low's?

The Witness: Yes, sir.

The Court: Combined. All right.

The Witness: And, going back a few years earlier, the average was about 44¾

The Court: All right. Well, proceed, now. At least for the purpose of your Line 6, you took the Commission's own value?

[165] The Witness: That's right, your Honor.

By Mr. Turney:

Q. Now, will you explain, please, sir, the purpose of Lines 10 to 20, inclusive on Exhibit D? A. The purpose is to show the expenditures for improvements not included in the rehabilitation program, and to show, further, the amount by which the increase in net cash value resulting from the Fourth Plan fails to cover the expenditures of bondholders' money for extraordinary improvements. That amount is shown in Line 21 of Exhibit B, and amounts to $7,794,282.00.

Q. Now, do you mean by that, that so far from reflecting the improvements, the Commission's so-called increased value is actually $7,794,282.00 less, if you take into consideration these expenditures? A. That is so.

Q. Now, let us go for a moment to the detail of the expenditures. Where did you obtain Line 10, the expenditures under the rehabilitation program? A. Line 10, in the amount of $2,419,577.00, is taken from Exhibit B, Line 16, the last column, and that is the excess of the expendi-

BLEED THROUGH

tures against the reserve established in the Third Plan over the amount of the reserve established at that time.

Q. Now, look at Lines 11 to 15, and without reciting what the amounts are, will you say what they include? [166] A. These items——

Q. Let me withdraw that question. Did you request and obtain from the Trustees a statement of extraordinary improvements made by the Trustees on the property under orders of the Court from 1941 to 1951? A. I obtained a statement from the Trustees of the expenditures on extraordinary improvements from 1941 through '45.

Q. Well, did you also obtain the expenditures from them that were made under the rehabilitation program, and under the lien orders? A. Yes, sir.

Q. All of those are from the trustees? A. That is correct.

Q. Now, in the statement of extraordinary improvements prior to December 31, 1945, did the Trustees include as extraordinary improvements the amount of general additions and betterments? A. Yes.

Q. Will you refer to your document and see if you want to correct that answer? A. I have to get the document.

(Witness producing paper).

Q. The papers I handed you are what? A. These are statements prepared by the Trustee—may I [167] have that question again, please?

> . . . The last preceding question, in words and figures as follows, was read to the witness:

"Now, in the statement of extraordinary improvements prior to December 31, 1945, did the Trustees include as extraordinary improvements the amount of general additions and betterments?" A. Prior to 1945?

Q. Prior to 1946? A. No, sir.

Q. Now, what did they include as extraordinary improvements in that period? A. They included work on the rail

program, payments on equipment, and these totaled for the years '41 to '45 $4,856,943.00.

Q. Did they also report the depreciation upon that property? A. Yes, sir.

Q. During that period? A. The depreciation during the same period was $429,566.00.

Q. Now, that left the net expenditures during the period 1941 to 1945, of the amount shown, of $4,427,387.00, did it not? A. Yes, sir.

Q. What was the sum of the total expenditures for extraordinary improvements during the period of the Trusteeship from [168] 1941 not covered by lien orders? A. That total is shown at Line 16 of Exhibit D, and amounts to $6,846,964.00.

Q. What amount did you deduct from that for normal rail changes over the eleven years? A. From the total expenditures shown at Line 16, there was deducted Mr. Gordon's estimate of the normal rail charges in the amount of $2,438,018.00 for an eleven year period.

Q. And did you examine and approve that estimate and adopt it as your own? A. I have adopted it as my own.

Q. Now, what was the net excess after deducting depreciation and after deducting the normalized rail charges, the net excess expenditures for improvements not covered by the liens, or the rehabilitation program? A. The amount was $4,408,946.00, shown at Line 18.

Q. The expenditures for improvements secured by the Court liens less depreciation as taken from Exhibit A there amounts to $5,205,436.00, as shown at Line 20? A. That is so. Well, as shown at Line 19.

Q. 19, correct. A. And the total——

Q. What were the total expenditures not included within the rehabilitation program but included outside of that program and under the lien orders? [169] A. That total was $9,670,382.00, shown at Line 20.

BLEED THROUGH

Q. And that is after all depreciation accrued and after normalized rail expenditures? A. That is so.

Q. Then, how did you reach the final total shown on Line 21? A. The amount shown at Line 21 sets out the amount by which the net increase in cash value resulting from the Fourth Plan fails to cover expenditures of bondholders' money for extraordinary improvements, is the difference between the total expenditures shown at Line 20 and the total increase in total cash value payable by ACL, in the amount of $1,876,100.00, shown at Line 9 of Exhibit D.

Q. In your opinion as an expert accountant, does the increased value of the Fourth Plan over the Third Plan reflect expenditures for improvements made under the lien orders? A. It does not.

Q. Will you now turn to Exhibit D-1 for Identification. This exhibit is entitled "summary of expenditures for extraordinary improvements made by Trustees, 1941 to 1951". A. That is the caption.

Q. Does it include any expenditures made under lien orders entered after July 11, 1950? A. It does not.

Q. Are all of the amounts shown on this page taken from [170] your preceding exhibit? A. Yes, sir. The first line is taken from Exhibit B. The second line from Exhibit D. The third is the sum of the first two lines. The fourth line is taken from Exhibit A. The sixth line is taken from Exhibit D.

Q. Last—and have you deducted again the normalized rail charges for the entire eleven years? A. Yes, sir, and from the total of the expenditures there is also deducted the accrued depreciation.

Q. Now, what does this exhibit show that the cash in the hands of the Trustees has been—the amount of the cash which the Trustees have expended exclusive of those on lien orders after July 11, 1950, over the period of the Trusteeship? A. The cash expenditures amounted to $21,186,346.00.

Q. Is that after the rail renewal? A. I beg your pardon?

Q. Is that after the normalized rail renewal? A. That is after the normalization of the rail renewal.

Q. Well, now, the cash expenditures shown on Line 5— A. The cash expenditures at the present time, more than that; namely, the $23,624,000.00 shown at Line 5, and after deducting the rail renewal adjustment, the net was twenty-one million. But, as a matter of fact, the expenditures of the Trustees totaled $23,600,000.00.

Q. And after deducting the depreciation, accrued expendi- [171] tures during Trusteeship for extraordinary improvements was the figure of approximately $16,700,000.00 shown on Line 7? A. That is, that amount is the net expenditure after normalizing for the cost of the rail program by the Trustees for the years 1941 to 1951.

Q. And is that amount to be deducted from whatever the bondholders get as a result of the reorganization as representing the value of the property at the time it came into the custody of the Bankruptcy Court? A. Yes, sir. And we have seen from Exhibit B that cash value or the consideration payable by Coast Line was $34,380,000 shown at Line 9 of Exhibit B.

And then there is deducted from that, the net expenditures by the Trustees, after the adjustment for the rail program, the amount of $16,696,000.00, shown at Line 7 of Exhibit D-1, and it is found that the Fourth Plan, or rather under the Fourth Plan, the bondholders of the Debtor would receive $17,684,000.00 for the property as it existed at the time it went into bankruptcy.

Q. Mr. Bickley, over the recess last evening, did you attempt to reconcile your Exhibit D-1, with Mr. Gordon's Exhibit A-2, I think it is—A-1—1-A? A. Yes, sir. I endeavored to make such a reconciliation, but I——

Q. Now, I— A. But I——

[172] Q. Did you finish? A. Yes.

Q. The total expenditures shown in Exhibit 1-A is $24,484,789.00? A. Yes. That, $24,484,789.00 is the amount.

Q. That compares with your $23,624,365.00? A. It does.

BLEED THROUGH

Q. In the first line of the Lynch Exhibit 1-A, general additions and betterments for the years 1941 to 1951 are included. Did you include the general additions and betterments from 1941 through 1945? A. No, sir. And that accounts for part of this difference.

Q. And in the source reference to Mr. Gordon's Exhibit 1-A, he speaks of statements furnished by the Trustees on January 3, 1952? A. Yes.

Q. Did you receive those statements? A. Yes, I had those statements but subsequently received revised statements. They came in the latter part of last week and they were different from the earlier information provided.

Q. And does that account for most of the remainder? A. Yes, I believe it does.

Q. Did Mr. Gordon also include part of the expenditures under "lien orders subsequent to July 11, 1950"? A. Yes, sir.

[173] Q. And you have not included those? A. I have not.

Mr. Turney: Now, if the Court please, I should like to offer in evidence at this time, Exhibits A, B, C, D and D-1, of the Witness Bickley.

Mr. Bourne: I would like to make simply a formal objection, your Honor, to record the fact that these do involve interpretations of the Plan. To be quite frank, I don't want to keep them out of the record, because I think your Honor would like to have them, but I don't want to have my failure to object construed as an agreement with the interpretation of provisions of the Third and Fourth Plan, which are matters of law and of argument.

The Court: Objection overruled. Let them be filed.

. . . The instruments last above referred to were received and filed in evidence and marked Exhibits A, B, C, D, and D-1, respectively.

By Mr. Turney:

Q. Mr. Bickley, does that include the results of your investigation of the comparison of the two statements and the net amounts which will be received by the FEC bondholders under the Commission's Fourth Plan? A. It does.

Q. Now, the second branch of your——

Mr. Bourne: Have those exhibits been given numbers?

Mr. Turney: Sir?

[174] Mr. Bourne: They haven't been given numbers yet, have they?

Mr. Turney: Yes.

Mr. Bourne: They have been admitted under those letters?

Mr. Turney: I expect so. I asked for them to be.

Mr. Bourne: It's all right with me. I want to be sure.

Mr. Turney: If the Court please, Mr. Bourne raises a question which I think might be well to clear up at this time, to avoid any confusion; we lettered these exhibits instead of numbering them. Now, in our examination we referred to a letter exhibit. I would like to ask that they be received in the record under those letters rather than the numbers, otherwise it would be difficult to compare the exhibits in the record.

The Court: All right. I do not see any objection to that. Let them be designated as they are.

. . . The instruments referred to were hereinabove so received under the letter designation.

By Mr. Turney:

Q. Now, the second phase of your investigation, I believe you stated yesterday, related to the earning power of the Debtor's property? A. That is correct.

BLEED THROUGH

Q. What investigation, generally, did you make to ascertain and to form an opinion as to that earning power? A. I examined the income accounts of the Debtor over a period of fifteen years from 1936 to 1950, and for the latest [175] available information for the year 1951.

My source for the years, 1936 to 1950, was generally the reports filed by the company with the Interstate Commerce Commission.

I also had the annual report of the company,—I suppose to stockholders; that's the way they are usually labeled—and I visited St. Augustine and obtained additional accounting and statistical data there.

Q. Now, with respect to this branch of the investigation, what was your first step? What did you first consider? The earnings of what period? A. Well, I first computed the earnings for the years 1936 to 1950, and, as I have explained, I then obtained additional information so as to project that review as far through the year 1951 as possible.

Q. Now, will you look at the single sheet marked for identification Exhibit E and entitled "Income available for fixed charges and Federal income taxes, years 1936 to 1950", and state whether or not you prepared that exhibit? A. Yes, sir.

Q. And is it true and correct? A. Yes.

Q. As far as figures ever are? A. They must usually be qualified.

Q. Now, will you explain why you separated the freight [176] and passenger services for this period? A. I made this operation because Florida East Coast Railway, like other railroads, is engaged in two general classes of service, each having rather different characteristics.

The revenues and the expenses of these two services do not always move in step. There are years when high earnings are realized on the passenger service and low earnings, and perhaps losses, are encountered in the passenger service.

I think it is necessary, in making an analysis of the earnings of a railroad company, to look at each of the passenger and freight services separately. And then, to combine them and get an overall view of the operations as a whole.

Q. Now, I didn't ask you this question but I notice on this Exhibit D, possibly for 1946 to 1950, you have the words "As adjusted by Gordon" with a footnote explaining that they were separated on the basis of the accounts involved. Are those adjustments covered in Mr. Gordon's Exhibit 27? A. A.

Q. About which you testified yesterday? A. That is so.

Q. Have you examined and analyzed each of these adjustments? A. Yes, I have gone over them and I heard Mr. Gordon's testimony.

Q. And do you adopt those adjustments as your own? [177] A. I do.

Q. You think they are proper? A. I do.

Q. Now, looking at the past results of operations, first, as to freight service, will you say whether or not from the standpoint of the freight service, the war years 1941 to 1945 were very abnormal? A. The war years—there was one year that produced more net railway operating income before Federal income taxes, than was realized in the year 1950.

If an average is taken of the three highest war years——

Q. And, what are they? A. —we will find—for the years '42, '43, and '44—we will find that the net railway operating income for that three year period averaged $5,968,000.00, which was slightly more than the $5,676,000.00 realized in 1950.

If there is taken——

Q. Now, you are talking about freight traffic? A. I am speaking of freight service. If an average is taken of the four war years, 1942 to 1945 inclusive, it is found that that average, amounting to $5,223,000.00 is less than the average for the three post-war years, 1948-1949 and '50, and compares with $5,676,000.00 in 1950.

BLEED THROUGH

The year, 1950, likewise exceeded the average for the five years, 1946 to '50. It exceeded the average for the ten years, [178] 1941 to '50, which includes five war years and five post-war years.

It exceeded, in substantial amount, the average for the fifteen years, '36 to '50.

Q. And now— A. So, in answer to one of your questions I would say that the war years as a whole, did not produce more revenues than are being realized currently, or were realized in 1950 and are likely to be realized in the future.

Q. Do you mean revenues, or do you— A. I mean net railway income.

Q. Now, passing to the second column, passenger service, what have you to say with respect to that service? Is the same picture shown? A. No, sir. Unfortunately, the post-war years have been years of substantial losses.

On the other hand, during the war period, the Florida East Coast realized good profits on its passenger train service. Of course, those large earnings were due to a heavy military load and to restrictions on the use of gasoline and rubber, such as tires, and the fact that the automobile companies weren't producing large amounts of cars for civilian purchase. They were unusual conditions.

Whether or not they will recur, is rather hard to say. If there is another World eruption, this company and others [179] might well return to the levels of the war years, although I hope that that will never be the cause.

The current non-profits—or rather, the losses of the Florida East Coast and its passenger train service, seem to me presents one of the most serious problems of the company. It's perhaps the major problem of the Florida East Coast.

On the other hand——

Q. Is it peculiar to that company? A. It's not peculiar to the Florida East Coast. The Class 1 railroads of the

country, as a whole, have been suffering substantial passenger losses since the war.

Q. Now, the net averages for the three periods, that is, the five, the ten and the fifteen year periods are shown in the last column on the last three lines? A. Yes, sir. And that is after bringing into the railway gains or losses, income from non-operating sources and a net of certain miscellaneous deductions.

Now, that shows that during the five years, 1946 to '50, the average gain from all operations before Federal income taxes and fixed charges was $3,091,000.00.

Q. That is for five years? A. That is for a five year period.

Q. The ten years? A. The ten year period, which include the war years, of course, the profit before income taxes and interest, was [180] $5,564,000.00

And then for the fifteen years, including the five post-war years and five war years and five pre-war years, the average was $4,012,000.00.

Q. Now, will you next turn to a single sheet marked for identification Exhibit F, and tell us what this is? A. Exhibit F is a comparison of revenue traffic units carried by the Florida East Coast during the years 1936 to 1951.

It shows the revenue traffic units as measured in revenue net ton miles.

The passenger traffic units as measured by revenue passenger miles.

And then, in the third column, the two types of service equated to a common basis in relation to contributed revenues.

Q. Now, without going too much into detail in this exhibit will you first explain whether or not the figure of 936,000,000 revenue net ton miles shown in the first column for the year 1951, which is estimated, and if so, upon what basis? A. The revenue net ton miles for 1951 represents eleven months actual and December, estimated, on the

BLEED THROUGH

assumption that the December revenue ton miles would be the same as the November revenue net ton miles for 1951.

Q. Now, in 1950, were the December ton miles the same or in excess of the ton miles for November, 1950? A. They were less.

[181] Q. December was less? A. December of '50, compared with November of '51.

Q. Yes. A. Of '51.

Q. No, '50? A. The November ton miles, in November of '50, were less than they were in December of that year. I thought you were comparing November——

Q. Well, is it proper to say, then, that your estimate of 936,000,000 is a proper estimate? A. Yes, I am quite sure it is.

Q. Now, without reciting the figures, will you tell us in how many years from 1936 through 1951, the ton miles—your estimated ton miles for the year 1951—were less than those of the previous years? A. The ton miles for 1951 were partially estimated—and when I say "partially" I mean to a very limited extent——

Q. Will you explain that? A. —were the highest of any year back to the war year 1944, and the previous war year 1943.

1946 has generally been referred to as a good year, but 1951 exceeds that year.

Q. Now, what is the picture, generally, without reciting the figures shown by the passenger miles comparison? A. The passenger miles comparison shows a downward trend [182] from the peak year, 1943, through to 1949 and '50, but a resurgence in 1951.

Q. How do the post-war years compare with the pre-war years in passenger miles? A. The post-war years are higher than the pre-war years.

The six year average, '46 to '51, 288,000 was the highest of any of the years, beginning with '41, back to '36, shown here.

Q. And using the East Coast as a common denominator, what would you say that this railroad shows with respect to the present level of traffic upon the Debtor? A. When the net ton miles and the passenger miles are equated to a common basis, it is found that 1951 exceeded the average for the six years, 1946 to '51, and was the highest of any period back to '48.

In fact, the trend as shown in the last column, on equated traffic units, was downward from the peak year 1943 to *1941.*

And then an upturn occurred in the total equated traffic units.

Q. You said "1941"— A. Will you read my answer to me, please?

. . . The answer was read.

A. I am sorry. I meant the trend was downward until 1949 and beginning in '50, there was again an upturn.

[183] Q. Will you turn now to the single sheet, Exhibit marked for identification G, and entitled "Freight revenues adjusted to 110% of the revenue of net ton miles in 1950". Did you prepare this exhibit? A. It was prepared under my direction.

Q. What is its purpose? A. The purpose is to show the freight revenues over a period of years, when such revenues are expressed at what one might call a uniform price level, or at a uniform average revenue per net ton mile.

Q. Pardon the interruption. But is that equivalent to pricing all on the same dollar? A. It's pricing them at the same average revenue per ton mile level. Because, the sense you have derived, if we turn to the matter in the purchasing power. So, it's not priced at even the dollar purchasing level.

Q. Well, stated another way, if the rate level had been the same in 1940 as it was—if the rate level in 1940 had been 110% of that in 1950, the revenues—that is, per net ton mile—would have been $9,708,000.00? A. That is so.

BLEED THROUGH

Because we are using—here, there was used, 2.4 cents as a uniform average revenue.

Q. Now, comparing 1951 with a pre-war year such as 1940, what does this indicate? Or, how does this indicate that the revenue has increased? [184] A. Are you speaking now, Mr. Turney, of the actual revenue or of the adjusted revenue?

Q. Both. A. The actual revenue in 1951 was the highest of any of the sixteen years shown here and is the highest I believe in the history of the company.

Q. Is that a true comparison? A. That is not a true comparison because since 1946 there have been various rate increases for freight traffic so that dollars do not reflect the same volume of traffic as is shown in the first column of Exhibit G.

Q. Now, what does the third column show? A. The third column expresses all the traffic at the uniform amount or average per revenue ton miles, and that average is based upon the amount in the last column for the year 1951, provided by the 1951 revenue in net ton miles.

Q. Now, do you regard that as an accurate comparison? A. Yes, I think that is a proper comparison.

Q. Now, comparing that column, 1940 with 1951, within that period of eleven years, what has been the relative increase? Just roughly in percentages. Has it been about double? A. You are speaking of the period from when——?

Q. I am comparing the adjusted revenue of 1941 with the adjusted revenue of 1951. A. The adjusted revenue for '41 was less than one-half of [185] the amount in '51.

The only years that exceeded '51 were the two war years, 1943 and '44, and '46 was slightly above 1951.

Q. Now, have you examined the estimates furnished by the Chief Accounting Officer of the Trustees, to Mr. L. S. Ormond, the Vice-President of the Atlantic Coast Line Railroad Company, estimating revenues, expenses and income for the years 1951 and 1952 in connection with the pending rate case, Ex Parte 175? A. Yes, sir, I have a copy of that statement.

Q. Now, will you turn, please, to your exhibit marked for identification H, consisting of a single page and entitled "Adjustment of 1951 revenues and expenses to the level of December 31, 1951"? A. I have the statement.

Q. Now, upon what, fundamentally, is this statement based? A. It is based first on the actual expense for the year 1951. The figures for that year are shown in the first amount column.

Then, the revenues were adjusted to the rate levels obtaining at December 31, 1951.

The operating expenses were likewise adjusted to the December 31, 1951 level.

The first step was to adjust the 1951 to the 1950 level, and then adjust again to bring those amounts back to the December 31, 1951 level.

[186] Q. Is that because the percentages increases allowed by the Interstate Commerce Commission to the Southern carriers, including the Debtor, which became effective at various times during the year 1951, were related to the rates in effect during 1950? A. That is the idea. There were two rate increases in 1951. The first, of 2% in April and the second of an additional 4% at the end of August. So that when you observed the revenues, the freight revenues for 1951, you had a combination of two conditions.

One, the traffic volume which had gone up, and two rate increases made at different times, neither being for the entire year.

And, in the second column of Exhibit H there have been applied, the factors that would adjust the 1951 back to 1950. But, inasmuch as the effective rate increase for 1950 represented by a total of six percent, amounted to only about five percent, then, when the '51 freight revenues are expressed at the level,—at the end of '51—the five percent has to be applied back to the '51 figures, adjusted back to 1950.

BLEED THROUGH

Q. Now, is that substantially the method followed by the Trustees' Chief Accounting Officer in making a similar computation based upon estimated revenues for the year 1951, in the letter to which I referred? A. I don't know exactly how the Florida East Coast went [187] about its computation. I do know that their statement shows three bases for statement of revenues and expenses.

The first one was to be a—was to be for the year 1951, actual, but had to be partly estimated because——

Q. Estimated on how many months? A. It's estimated on the basis of nine months, actual, and three months estimated.

Now, on the second basis, they took the level of rates existing at the end of the year and made those rates retroactive for the year.

In other words, they were to give effect to the rate levels obtaining at the close of December of '51.

Q. Now, is that what you have done here? A. I have done the same thing but I say, I don't know just how they went about it.

Q. Now, comparing the end result, does your percentage increase the revenues over the actual revenues for 1951, coincide with the Trustees' estimate over the estimated revenues for 1951? A. Yes, sir.

Q. So, if he didn't follow this basis, he followed a basis which produces substantially the same result? A. There are slight differences in the figures, but they are very minor.

Q. But the way the Trustees estimate was— [188] A. Well, there's another reason for it. The Trustees' estimate was based on 880,820,000 revenue net ton miles.

In Exhibit H there has been used, 936,000,000 revenue ton miles, which is eleven months actual instead of nine months actual and only one month estimated as compared with a three month estimation made by the Florida East Coast.

Q. Now, let me ask you whether or not in lines 7 to 10, in estimating passenger revenues, mail revenues, express

revenues and other revenues, you used exactly the same percentage increase over the actual year 1950, that the trustee used over his percentage in the year 1951? A. That is correct.

Q. Now, turning to lines 12 to 21, which deals with expenses, I will ask you the same question, that is, whether or not the percentages of increase in expenses shown in the third column are identical with the percentages of increase used by the Trustees in estimating—in making a similar estimate based upon estimated revenues for the year 1951? A. That is so.

Q. Now, as a result, and stated as an overall result, what does this exhibit show with respect to the revenues of the Debtor, of a year, at the rates actually in effect in December, and the expenses actually in effect at December, plus the increase, the escalator increase in certain employees wages? What does it show with respect to that year? [189] A. It shows that such a year—which is the year 1951—adjusted to the rate and expense levels at the end of '51, would have $388,000.00 more net railway operating income than was actually realized in '51, and this amount——

Q. Pardon me a minute. You said "net railway operating income". Did you not mean "Income available for charges"? A. No, sir, I meant net railway operating income before Federal Income taxes as shown in Line 23. That is, the $2,692,000.00 in the last column exceeds by $388,000.00 the amount shown in the first column.

On this Exhibit there was no change in other income less deductions, so that as a result, the increase in the income available for fixed charges and Federal income taxes is the same as the increase in net railway operating income.

Q. In other words, this statement represents the effect on the year 1951 of realized and effective rate increases and expense increases? A. That is what it does.

Q. Now, you mentioned other income less deductions as shown in Line 24, and you have a figure of $366,000.00. Is that a correct figure for the future? A. No, sir, that——

BLEED THROUGH

Q. Will you explain that in connection with a later exhibit? A. I will.

[190] Q. Now, will you please turn— A. Now, may I make it clear? It's a correct figure as far as the book statement is concerned.

Q. It is a correct figure for 1951? A. That is correct, that is what I meant to convey.

Q. Now, will you turn to the single sheet marked for identification Exhibit I, and entitled "Debtor's income available for fixed charges and income taxes", and say whether or not that statement is true and correct and was made by you? A. Or, under my direction.

Q. Or, under your direction? A. It is.

Q. Now, what does the first line show? Not read the figures, but just tell us what it shows. A. The first line shows the year 1951 as reported, taken from Exhibit H.

Q. You have corrected it by deducting the accelerated amortization— A. Yes, that was the first step.

Q. What does the second line show? A. The second line shows Mr. Gordon's adjustments of the operating expenses for the year 1951.

Q. That is a net increase in income available? A. Yes, sir, and as shown, it is Exhibit 27-A.

Q. Now, what does line three show? [191] A. At Line 3, I have deducted unusual non-operating income. It has been stated in connection with Exhibit H, that the reported non-operating income less miscellaneous deductions was $365,522.00. That, however, included about $153,000.00 of interest on Federal income tax refunds. And, I have eliminated that amount.

Q. Did you eliminate any other item? A. No, sir, that is the only one.

Q. Did you examine each one of them to see whether they should be eliminated? A. Yes, I had a detail of the major items making up the net $365,000.00.

Q. Now, what is Line 4, on Exhibit I? A. Line 4, is taken from Exhibit H and shows the net increase resulting from

rate and cost increases realized as of December 31, 1951, and it is the increase shown in Line 23 of Exhibit H.

Q. Well, is the figure of $3,174,000.00 shown in the last column, opposite Line 9, the— A. Line what?

Q. Line 4.—the income available for fixed charges in a year equivalent to 1951, giving effect to realized rate and cost increases? A. Yes, sir.

Q. Is there now pending, a proceeding for a further in- [192] crease in rates? A. Yes, sir. The Southern carriers are petitioning the Interstate Commerce Commission for an additional increase in freight rates amounting to nine percent. That would bring the total increase in such rates since 1950, up to 15%.

Q. Are those—have you read the testimony of the several witnesses for the Southern carriers and examined the exhibits in that case? A. I don't know whether or not I have examined all of the testimony or all of the exhibits. I have examined part of the testimony, at least part of the testimony of Messrs. Fields, Hill, and another gentlemen, I believe, Trundle——

Q. Trundle? A. —and also the testimony of two men with the Seaboard, and I believe, the Southern.

Q. And how about the testimony of President Davis? President of the Coast Line? A. I am sorry, I probably said Mr. Hill when I meant Mr. Davis.

Q. You weren't thinking of the Great Northern Hill, were you? A. No, I was thinking of Louisville.

Q. Now, in that presentation did you find that this increase—9%, additional 9%—was for realized expenses or for additional expenses on account of increases in labor and [193] materials expected in 1952? A. My understanding is, the increases being sought are to cover the costs as they were anticipated at the January 1, 1952 level.

Q. Now, why have you used an additional increase of 5% in your Line 5? A. I have used five perecent which is just a little more than half of the 9% sought. In order to make allowance for various possibilities. One, is the pos-

BLEED THROUGH

sibility that not all of the 9% will be granted. Another is the possibility that through the divisions of revenues from inter-territorial traffic, the Florida East Coast would lose something.

Another is that the increase in the intra-state rates may not be coincident with any increase in the interstate rates, or that the local rates may not be increased as much as the interstate rates.

So I have discounted the 9% sought to 5%, in order to make allowances for the factors that might bring the effective increase down to only 5%.

Q. Now, in Line 6, you show an item of one hundred thousand dollars savings in expenses upon reorganization.

I will ask you whether or not that amount comes from the findings of the Commission in its Fifth Supplemental Report, Document 938, at Page 192? A. That is my source for this adjustment.

[194] Q. And those were the savings which the Commission found would occur upon any reorganization, including an internal reorganization? A. That is my understanding.

Q. Now, the last line shows "Potential savings upon completed dieselization". I will ask you whether or not you obtained from the Trustees, a study made by General Motors providing for the dieselization of yard service, of local freight service and the completion of the dieselization of the through-freight service. A. Yes, sir. General Motors made a survey, and on the basis of the survey and study——

Mr. Bourne: Well, now, I object to further answering this question and I ask this witness, if this witness is going to rely for that, on his increase of $929,000.00 a year, that we see the study itself.

Mr. Turney: I will be happy to let you have it.

Mr. Bourne: All right.

Mr. Turney: Do you have it there?

The Witness: No, I don't have a copy among my papers here.

Mr. Turney: We will funish it to you later.

By Mr. Turney:

Q. With that study, Mr. Bickley, did you cause the computation of the General Motors to be checked with respect to the savings? [195] A. Yes. I understand that the Florida East Coast Railway has examined and has checked the report and has confirmed, so far as estimating is concerned, the estimate set forth in the General Motors report.

The amount of the saving is stated in the report at about a million fifty thousand dollars. That, however, did not take into consideration any increased depreciation resulting from complete dieselization. And the figure of nine hundred and twenty-nine thousand is after reducing the General Motors estimate by reason of such additional depreciation.

Q. Now, do you remember upon what period—what twelve months period the General Motors study was based, in determining the savings? A. I believe it was the latest period available.

Q. What period was that? A. In '51.

Q. Well, was it the twelve months ended November 30, 1951? A. I know it ended some time in November. I wasn't sure whether it was a ten months or twelve months period.

Q. And did you check computations with respect to that type—to each type of unit, each class of service and the location of the unit and the service with respect to locomotive miles, locomotive hours and unit costs? A. I had such a check made.

Q. And did you reach conclusions—and did you reach [196] substantially the same figure that the General Motors did? A. Well, that was merely a breakdown of the General Motors information. General Motors, in its report, says that this one would be followed by a more detailed one.

BLEED THROUGH

The information contained in this report, however, was sufficient to make a breakdown by locations and by type of service, and when that was done, there was a complete reconciliation with the total savings found by the General Motors engineers.

Q. Now, what is your opinion with respect to whether or not any provident management, whether it be the Coast Line or an internally reorganized company, or the Trustees, would take with respect to finishing the dieselization program? A. I believe that with funds available—and it appears to me there will be funds available—there will be brought about complete dieselization.

Other roads have been moving rapidly in that direction, not all of them, and not all at the same rate, but the trend, as I see it, is for dieselization.

There will be exceptions because of the territory in which the carriers operate and the availability of cheap fuel, the possibility of developing more efficient locomotives through the years, through the use of coal. But it seems to me that the dieselization offers great promise.

In any event we know this: That road is almost completely dieselized now. The only thing remaining—the only operations [197] remaining are yard switching and local freight and additional equipment to bring about complete dieselization of their through traffic.

Q. Now, if you add to the income account—the income available for charges on a year equal to 1951, in all respects except including the realized increases in revenues and expenses, the savings upon reorganization and the potential savings upon complete dieselization, what is the income for charges available remaining? A. After excludnig the last three items on the statement to income would be about three million two hundred thousand dollars. That is before taking into account, the additional five percent increase in rates, the savings upon reorganization and the savings from complete dieselization.

Q. Mr. Witness, I think you misunderstood my question. My question was that if we assumed that the year 1951, adjusted for realized rate increases and expenses as normally—if we add to that, the one hundred thousand dollar savings in expenses upon reorganization and the potential savings of dieselization, of nine hundred and twenty-nine thousand dollars, what would be the result of income available for charges? A. That sum would be $5,200,000.00, shown as the last item of Exhibit I.

Q. Well, now, I did not include the sum of one million [198] seven hundred thousand dollars, Mr. Bickley? A. I am sorry.

Q. What would be the sum? A. That amount, or the income available, exclusive of the further rate increase would be about four million two hundred thousand dollars.

Mr. Turney: I would like to offer at this time, if the Court please, a series of single sheet Exhibits marked E, F, G, H and I.

The Court: Very well, let them be marked.

. . . The instruments last above referred to were received and filed in evidence and marked Exhibits E, F, G, H, and I, respectively.

By Mr. Turney:

Q. Mr. Bickley, was the next phase of your investigation directed towards——

The Court: Before you start, Mr. Turney, briefly, what is the relevancy of this type of testimony that you propose to offer now, beginning with this Exhibit I? And also the evidence you have just finished, as applied to the problem that is before the Court for consideration? That is, the fairness and equitableness of the plan? I can see how this would be quite relevant on the problem of valuation. That problem, however, is committed to the Commission by law, unless the valuation fixed is so grossly inac-

BLEED THROUGH

curate as to render the Plan itself, unfair and inequitable. Just briefly, why should we [199] go into all this, here, on the Court's problem?

Mr. Turney: Just for that purpose, your Honor, because you cannot determine the fairness and equity of the plan unless you determine the value of the property.

The Court: Well, do you and I agree, now, that the power to fix the valuation of these railroads, in public reorganization, is vested by law, in the Commission? Do you agree with me on that, or differ?

Mr. Turney: No, sir, I differ with the Court to this extent, that the valuation of the Commission must be supported by substantial evidence, and we say that it is not, and since the value was fixed under improper standards and improper elements of value, and the real value was not fixed by the Commission, and——

The Court: Well, it seems to me you are assuming a pretty heavy burden when you try to upset, or knock the Commission down on its valuation when you take into consideration what the Court has said on that point.

Mr. Turney: We will assume that burden, your Honor, and we believe the record will conclusively demonstrate it. I don't want to argue the case at this point, but let me point this out. The Commission based its value on earnings of two million, three hundred thousand dollars a year, available. That is less than one half, or, about one half of the actual earnings available at this moment.

[200] Now, we say that that is so grossly an improper basis for valuation, that this Court—if I may use a colloquial expression—as a thirteenth juror, its conscience must be satisfied that fairness and equity must be done, and it cannot be satisfied if there has been a grossly inadequate valuation based upon improper standards of value.

I just might mention this, your Honor. I think that question was very well set forth in an opinion attached a denial of certiorari, in the *Seaboard* case in which Mr. Justice Frankfurter developed, for the first time, the effect of undervaluing the income of a company in reorganization. He pointed out that in the *Seaboard* case, after an exhaustive valuation that reached an estimated earning power of six million dollars. Since that time——

The Court: In the *Seaboard* case?

Mr. Turney: Yes.

The Court: The Seaboard never did get into bankruptcy.

Mr. Turney: Well, in the equity receivership case. And in that case that value was fixed, after a very careful and exhaustive study, and there it was an internal reorganization. It wasn't the taking of the property as we have here, and we urge here and point out, that since the Seaboard came out of receivership, its earnings have averaged well over sixteen million dollars or two and half times as much as much as that, by reason of that under-valuation——

[201] The Court: For what purpose was the Interstate Commerce Commission fixing the valuation of the Seaboard? For issuing securities?

Mr. Turney: They—that value was fixed by the Master in the *Seaboard* case, but it was on the same basis of earnings.

Now, I think the opinion—it has been several weeks since I read it—I think the opinion goes further and cites other cases where grave injustice has been done by under-valuation of income. This is a prime example of what happened.

The Court: I can very well see how, if the Commission would say, for example, the value of this property, which we are considering now, is ten million dollars for this purpose, when it is perfectly

BLEED THROUGH

obvious it is forty million, that then the Court might be justified in saying the valuation is so obviously inaccurate as to permit the Plan, or, declare the Plan unfair and inequitable, but primarily the problem of valuation and the problem of fixing the value, is vested in the Commission, as I understand it.

Mr. Turney: That, Your Honor, I think is right, where it becomes the duty of this Court to measure fairness and equity. Of course, if your hands are tied——

The Court: I don't think either the Interstate Commerce Commission or this Court or anybody else can act arbitrarily in it and say, that is it. I don't think at all. But primarily it is inescapably a matter for the Commission, and you have to [202] make a strong showing, to overcome it.

Mr. Turney: We appreciate that, Your Honor, and of course there is another phase of this case that is not in any other case, where the question of valuation was decided. And that is, you have here in the guise of a bankruptcy case, the taking of the property. We say that is protected by the Constitution, and Congress cannot take away the duty of this Court to protect that constitutional right.

The Court: Due process operates in bankruptcy just as every place else. Well, if one of your main contentions on your argument is going to be that the valuation fixed by the Commission is so obviously and technically inadequate as to, per se, render the Plan inequitable and unfair—if that is the burden of your argument——

Mr. Turney: That is one.

The Court: I will let you go on and hear your contention on that.

Mr. Turney: There is another element on which this has a bearing, not directly on the fairness and equity. We intend at a little later point, to compare

the earnings which the Coast Line would receive from this property on reorganization, with the amount which they, under the Plan, would be paying to these bondholders. In other words, we expect to show that a very substantial part of these earnings will be taken from the bondholders and appropriated by the Coast Line under that Plan, [203] and we think that is thoroughly within the Court's jurisdiction in measuring fairness and equity.

The Court: All right, proceed.

Mr. Bourne: Could I be heard very briefly as to these particular things, only?

The Court: Don't go off into any extended argument, but, briefly.

Mr. Bourne: We will be brief.

The Court: This is not the time for argument. If you want to just mention something I will hear you.

Mr. Bourne: I want to make objection to so much of this line of testimony and to such of these exhibits as are repetitious of what is all in the record before the Commission.

Statistics of this type, in great volumes and large numbers of exhibits were before the Commission. We argued that they were of very little probative force on any of the issues.

It is complained now that the Commission should have given them more weight than it did.

My objection is to repeating, here, testimony which is before Your Honor, certified to Your Honor, and I am willing to take Mr. Turney's statement as to which, if any of these, are really importantly different from what the Commission had.

Mr. Turney: If the Court please, these exhibits to which counsel objects, are based—are introduced primarily to show that the Commission made a finding, either without any evidence [204] or contrary to the evidence that this carrier was a stub-end branch line railroad.

BLEED THROUGH

Now, that issue was never raised before the Commission. It was stated for the first time in the Fifth Supplemental Report. Even the Coast Line made no such contention.

Now, we say that in the face of that finding, without any evidence at all, that it is our right and our duty to show how false and baseless that finding was.

> The Court: Well, as a matter of fact, Gentlemen, the Court has no power of clairvoyance, and I cannot possibly tell in advance what the relevancy of these things are, until I have heard them, and analyzed them. I just can't arbitrarily say "You can't put that in and you can't put this in", because I don't know what the substance of it is, or what the relevancy is.
>
> Mr. Bourne: Well, I limited my objection, your Honor—my objection pertains to only so much.
>
> The Court: That is, the repetition?
>
> Mr. Bourne: That is the repetition, and I will accept Mr. Turney's statement as to whether it is repetitious or not.
>
> The Court: We cannot stop now and find out what the repetition is.
>
> Mr. Bourne: He is familiar with it.
>
> The Court: No, I think the fastest way to get along is to continue these exhibits and let him explain them and see [205] what they are. Go ahead.

By Mr. Turney:

Q. Mr. Bickley, the statement is made in the Fifth Supplemental Report that the Debtor is peculiarly subject to water and truck competition. Have you prepared an exhibit which compares the tonnage of the Debtor with the Coast Line, the Southern and the Seaboard for the past five years with the pre-war tonnage of 1940?

Mr. Bourne: Now, I would like to have it understood, if we may, your Honor, when Mr. Turney paraphrases statements of the Commission or gives his version of them, my failure to object is not to be taken as acquiescing in what he said was said.

The Court: Oh, no. Just let him answer the question.

Mr. Turney: I assure the Court I am not trying to.

By Mr. Turney:

Q. Have you—— A. I have such a statement.

Q. Is that statement the two page Exhibit marked Identification Exhibit J? A. It is.

Q. Now, will you tell us in terms—strike that question. On the second page, do you show the actual tonnage by these commodities of these four railroads for the year 1940 and for the five post-war years 1946 to 1950?

[206] A. The sheet 2 of the exhibit is such a statement.

Q. Was the information taken from the reports of the Interstate Commerce Commision? A. That was the source.

Q. Now, on sheet one, have you related the tonnage of each class to the year 1940 as a basis of one hundred? A. Yes, sir. The tonnage of the years 1946 to 1950 inclusive, was expressed as an estimate of the tonnage of the year 1940.

Q. Now, comparing the products of agriculture, handled by the Debtor in 1950, with 1940, what was the ratio? How many times? How much greater? A. The tonnage of the Debtor in products of agriculture for the year 1950 was 427%——

Q. Well, now, in simple language, is that four times? A. About 4.3 times.

Q. Now, how does that compare, without giving the figures, with the three other railroads? Is it not greater? A. It is—yes, sir, it is considerably greater than the other roads. I said the tonnage of the Debtor was four or four

BLEED THROUGH

and one third times. It was 327% above or about three and a third times.

Q. Now, what is true with respect to the second group? Animals and products? A. The same general result is shown there. And I might [207] add in connection with products of agriculture, that that was the second largest commodity group of the Debtor.

Q. Well, now passing to products of mines, is it the same story? A. There is the same story there and the products of mines are the largest commodity groups for Coast Line, Southern and Seaboard.

Q. Now, passing to the products of forests, is it the same story there? A. The same story is outlined there.

Q. Now, with respect to manufactures and miscellaneous, is there a variation? A. Yes, the Seaboard in 1950 was higher, percentagewise, than the debtor, Coast Line or the Southern.

Q. Was the Debtor higher than the Coast Line or Southern? A. Yes. And the products—manufactures and miscellaneous, as a commodity group, are the largest for the Debtor and the second largest for the other three carriers.

Q. Now, taking the total of all tonnage, how does the Debtor compare with the Coast Line? A. The Debtor has exceeded, in growth, during these years since 1940, the Coast Line.

It has likewise exceeded Southern and Seaboard indicating that the Debtor has been suffering from the competition of other forms of transportation to a lesser degree than the [208] Southern and Seaboard.

Q. Do these indices indicate that the Debtor has been suffering from the competition of other forms of transportation to a greater degree than its direct connections? A. I would say that the information shown here would not support a conclusion that the Debtor has suffered more from the other forms of transportation than has its three connecting carriers.

Q. Now, will you turn to the Page, Exhibit marked for identification L, and tell us, generally, what this tatement is?

[209] First—let me withdraw that question, please.

Were you asked to make an investigation as to whether or not the Debtor was a weak, stub-end branch line, unable to compete with its trunk line competitors? A. And unable to stand alone as——

Q. An independent entity? A. As a separate and independent operation.

Q. Yes, sir. A. Yes, I was requested to make that kind of investigation.

Q. Is one of the results of that investigation shown on this exhibit? A. Yes, sir.

Q. Now, do you regard the nine things, the elements of comparison—that is, density, gross ton-miles per train, the average train length, total and loaded, the average speed, the average revenue per mile of road, and the average revenue per train mile and per ton mile as indicative of the earning power and strength of the carrier? A. Yes, sir. These ratios or factors were selected as being——

Q. Now— A. —As being indicative of earning power and ability of a company to stand on its own feet. They are set forth not for the purpose of showing a relative efficiency, but [210] of relative results.

Q. Now, let me ask you whether or not in any of these important respects—in any of the periods shown—that is, the five year period post-war, five year war period, the five year period 1936 to 1940, or the whole fourteen year period, there is the slightest indication of relative weakness in earning power or ability to stand alone of the Debtor is shown by any of these nine characteristics? A. There is nothing in any of these characteristics that would support a conclusion that this is a weak road from the standpoint of freight traffic, and that it cannot stand alone. It has all the characteristics from the standpoint of earnings, from the standpoint of operating results, that is, of a compara-

BLEED THROUGH

tively strong, trunk line road, and not the characteristics of a weak branch line or of a weak stub-end line. If these are fairly indicative of the results of a railway property operations, in all respects the Florida East Coast in its freight service compares favorably, certainly, with its three connecting carriers.

Q. They are among the largest carriers in the south? A. They are.

Q. Now, will you turn to the five page exhibit entitled, "Relative earning capacity"? The first two pages, dealing with freight service, the second with passenger service, and the third, certain percentages with all service [211] statements as to the Debtor's income available for fixed charges and income taxes. Have you reached any conclusion from your investigation and study as to the future earning power of the debtor? A. Yes, sir; I have.

Q. And what is that opinion? A. In my judgment, the future normal income available for fixed charges and federal income taxes will range between about $4,200,000.00 and five million dollars.

Q. Now, you have prepared a statement, exhibit "J-1", which gives effect to the Commission's four plans and the Bondholders' Plan, assuming income available for fixed charges and an amount which you believe will be realized over a normal period? A. Yes. I have taken from this range of $4,200,000.00 to five million dollars a figure which represents the arithmetical mean of the extremes, and which I, in my opinion—may be roughly expected as an average income over—we will say, a five year period. That amount is $4,600,000.00.

Q. Now, what have you done—without reading the figures—on Exhibit "J-1"? A. On Exhibit "J-1" I have used an estimated $4,600,000.00 as a basis for capitalization and a measurement of value. The $4,600.00.00 of income applied to the Interstate Commerce Commission's fourth plan and to the plan presented by the [212] certainly is not a weak road.

Mr. Turney: I would like to offer, if the Court please Exhibits "K", "L", and "M" at this time.

The Court: Very well. Let them be filed.

. . . The instruments last above referred to were received and filed in evidence and marked Petitioner St. Joe Paper Company's Exhibits K, L, and M, respectively.

The Court: How much more time do you think you are going to require, Mr. Turney, for your direct?

Mr. Turney: I think I will finish before the adjournment.

By Mr. Turney:

Q. Mr. Bickley, what you have said in your last answer applied particularly to freight service. Is there any modification that you would make if you were dealing with the passenger operation, with the passenger service? A. Well, all the four carriers show losses on an average for the four years—for the five years, 1946 to 1950, inclusive, and there is only one basis on which those losses are higher for the debtor, and that is when the net railway operating income is related to the miles of road. Now, there are variations with respect to the other items, but they are not large. When the entire fifteen year period is considered, the Debtor shows up favorably, compared with the other roads.

Q. Now, Mr. Bickley, in Exhibit "I", you set forth various [213] A. Yes, sir.

Q. And tell us what the purpose of this exhibit is. A. Well, this exhibit is to test more directly the relative earning capacity of the Debtor in its three connecting carriers. The previous exhibit dealt with the traffic and operating characteristics which are reflected in the earning capacity of a road so that there is a relationship between the two forms of proof. Now, the exhibit "M", is it?

Q. Yes. A. Which was with respect to each of freight and passenger service, the operating cost as a percentage

BLEED THROUGH

of revenues, and shows how much of the revenue dollar flows down to the security holders. Similar information, although not in the same detail, is shown on the basis of per mile of road operated. This section is more detailed, in order to try to relate certain expenses to road mileage, that is, the expenses which may be a function of mileage rather than of revenue. The same thing applies to the information on a per train-mile basis. Sheet—or page 1 of Exhibit "M" pertains to freight service, and shows averages for the five years 1946 to 1950. Page 2 of Exhibit "M" gives the same kind of information with respect to freight service, but as an average for a fifteen year period, 1936 to 1950. Now, here, again, we find all the evidences of financial strength. The debtor compares favorably with all of its three connecting carriers, and

[214] Q. Now, with respect to capitalization, have you made any change in either one of those plans? A. No, sir. Well, the only—the change that has been made there is to incorporate obligations that were not given in the Plan—for example, under the Commission's Fourth Plan there were to be issued $27,500,000.00 of bonds; and, taking December 31, 1951, as the consummation date, the equipment obligations would be $5,146,000.00. Then, the debt has been increased to provide for the complete dieselization of the property.

Q. Is that based on the estimate of General Motors? A. That is based upon the General Motors estimate of cost.

Q. And that results—what are the capitalizations under the two Plans? A. They result in total capital obligations of $55,760,000 under the Commission's Fourth Plan and over fifty eight million under the bondholders' Plan.

Q. Now, out of that $4,600,000.00 under the Commission's Plan in each year, how much would the present owners of the Debtor receive under the securities of the Coast Line to be delivered in exchange for the property, assuming a continuation of the dividend upon the preferred and common stock at the present rate, and payment in each

year of the contingent [215] interest? A. You were referring to each year, I suppose you mean?

Q. The normal average year. A. A normal, average year. Under the Commission's Fourth Plan, there would flow to the bondholders, that is the Florida East Coast Bondholders, the amount of $1,759,000.00, and the Coast Line would retain $837,000.00 of earnings produced by the Florida East Coast property. Under the bondholders' Plan there would flow to the present bondholders the amount of $2,441,000.00, which would be all the available earnings less the interest on the equipment obligations.

Q. And less income taxes and— A. That would be—well, that is—well, both of these are after income taxes.

Q. At 52%? A. A 52 percent tax rate.

Q. If that tax rate in the future should be reduced to a normal rate, would this amount be proportionately greater to the Coast Line? A. Yes, it would. It wouldn't——

Q. The Bondholders would receive from Coast Line the same amount, assuming that all the interest is paid and all of the dividends are paid, but if there were a reduction in Federal Income tax rate, that would add to the balance of earnings accruing or remaining in the possession of Coast Line. On [216] the other hand, in the future, if there is a reduction in Federal income tax rates, the full benefit of such reduction would accrue to the benefit of the Bondholders? A. That is, the present bondholders.

Q. So that any reduction from the present level of taxation under the Commission's Plan will enure solely to the Coast Line—under the Bondholders Plan will enure solely to the Bondholders? A. That is correct.

Q. Now, in your estimates of income, you have estimated normal income. Have you given any consideration in that estimate to the earnings of an abnormal period, such as that which obtained between 1942 and 1946? A. No, sir. I have tried to estimate the earnings for a normal period, and have not taken into account abnormally high earnings; neither have I taken into account subnormal earnings. I have not assumed a great depression, neither have I

BLEED THROUGH

assumed a tremendous boom. I have tried to arrive at a normal situation, but I consider growth of the country as normal.

Q. Now, Mr. Bickley have you given consideration to what would have happened if—or what would happen if we should have another period like the last ten years beginning with this year. That is, if 1952 should be like 1942, 1953 like 1943, et cetera, until you get to 1961? A. Yes, I have taken a look at the earnings on such a basis.

[217] Q. Now— A. The results are set forth in an exhibit I have marked for identification as J.

Q. Now, will you look at J and state whether or not the earnings before taxes are shown in the second column? A. Yes, sir.

Q. And over the ten years from 1942 to 1951, they averaged $5,695,000.00? A. Yes, those are the earnings for the years 1942 to 1951. May I have a moment, please, Mr. Turney?

Q. Sir? A. May I have a moment?

Q. Yes. A. (Witness referring to exhibits) All right.

Q. The earnings after taxes are shown in column 4? A. Well, they are the earnings not after actual taxes but after an assumed tax rate of all years of 52%

Q. That is the present tax rate? A. That's right.

Q. Now, column 5 shows the net amount that the Coast Line would have taken out of this property in each of those years after a 52% income tax rate and after paying to the Florida East Coast creditors the interest and dividends upon the securities issuable under the Plan? A. That is so. And then——

[218] Q. And over— A. The amount of such payment is shown in a note marked 5.

Q. And over the ten year period, on the average, they would have appropriated from the debtor's earnings approximately a million dollars and a half a year; is that right? A. As compared with the $1,860,000.00 that would go to the Florida East Coast Bondholders if all of the interest and dividends were paid.

Q. Well, that eighteen sixty also includes the payment on equipment trust, does it not? A. Yes—no—no, wait. That is so, equipment trusts are included there.

Q. Now, what is the ratio of the present outstanding shares of stock of the Coast Line to the sixty thousand shares which the Bondholders would receive under the Commission's Plan? A. Well, the Coast Line now has outstanding in common stock, and with a very small amount of preferred stock, about 17—or 13.7 times the sixty thousand shares of common that would be issuable in part consideration for the properties of the Florida East Coast, so that in order for the Coast Line to match the contributions to its total earnings the earnings of the Florida East Coast, the earnings of Coast Line on its present operations, or before absorption of Florida East Coast, [219] would have to be 13.7 times the contribution of the Florida East Coast.

Q. Now, is the amount of that contribution computed at the rate shown in column 6? A. Yes, sir. That is the way column 6 is arrived at.

Q. And over the ten years period, that would average $20,538,000.00 after taxes and after all interest? A. That is the——

Q. And dividends? A. That is the situation.

Q. Now, what, in fact, did the Coast Line do over that ten years? What is the comparable figure to be compared with that $20,538,000.00? A. The average amount as reported was $7,328,000.00.

Q. I have just one more question and I will finish on direct, or I will save it until after lunch.

The Court: Well, go ahead, just one; but I hope your arithmetic is good.

Mr. Turney: Well, I do, too.

By Mr. Turney:

Q. Mr. Bickley, you have—as a result of your investigation, have you reached any conclusion as to the fair value

BLEED THROUGH

of the property of the Debtor as of this date? A. In my opinion, it is $58,000,000.00.

Mr. Turney: If your Honor please, I find that I have [220] another question which I will reserve until after lunch. Your Honor was right, and my arithmetic, as usual, was bad.

The Witness: Well, may I add one thing—all right.

The Court: Do you want to add something to your answer?

The Witness: Well, I have given a range of earnings and a range of value might be given to correspond, but on an average I say it is about $58,000,000.00.

The Court: The court will stand in recess until two o'clock.

. . .And thereupon Court adjourned to be reconvened at 2:00 o'clock p. m., Tuesday, February 5, 1952.

[221] . . . And thereupon at 2:00 o'clock p. m., Tuesday, February 5, 1952, Court reconvened pursuant to adjournment of the morning session, and the following further proceedings were had:

The Court: All right, recall the witness and proceed.

Mr. Turney: Your Honor, I don't know what has become of Mr. Bickley. I didn't see him at lunch. I can put on another witness if you want. He will be real short.

The Court: Have you got a short witness?

Mr. Turney: I think he will be about fifteen minutes on direct.

The Court: All right. Bring him on.

Mr. Turney: Your Honor, before I start interrogating this witness, I would like to ask that Exhibits K, L, M, N, J, and J-1, be received in evidence, from the previous witness.

The Court: Very well.

. . . The instruments last above referred to were received and filed in evidence and marked Exhibits K, L, M, N, J, and J-1, respectively.

J. R. STANFIELD having been produced and first duly sworn as a witness herein, testified as follows:

Direct examination by Mr. Turney:

Q. Have you been sworn, Mr. Stanfield?

Mr. Bourne: I do not have any copy of the exhibits.

Mr. Turney: I am sorry, sir. There is one, Mr. Bourne.

[222] By Mr. Turney:

Q. What is your name? A. My name is J. R. Stanfield.

Q. Where do you live? A. My office address 227 West Forsyth Street, Jacksonville, Florida.

Q. What is your business? A. I am presently connected with the Jacksonville Traffic Bureau as director of its port development section.

Q. How long have you held that position? A. For the past five years.

Q. How long have you been engaged in transportation traffic work? A. Roughly for the past twenty-two years with Southern Carriers, and with the Traffic Bureau.

Q. With what carriers were you engaged? A. With the Savannah and Atlanta Railway, which is now part of the Central of Georgia, and later with the Central of Georgia Railroad, at Savannah, Birmingham, and at Jacksonville.

Q. Does the nature of your present job require you to become familiar and to maintain familiarity with the operations of water carriers, ports, railways, and motor carriers in Florida, and particularly along the East Coast? A. Yes, sir That is my primary business.

BLEED THROUGH

Q. And has that been your business for the past five years? [223] A. For the past five years; yes, sir.

Q. In connection with this proceedings, were you asked to prepare a statement of the Motor Carriers operating along the lines of the Florida East Coast and those operating along the lines of carriers which operate north from Jacksonville to the northern states? A. I was so requested.

Q. Is the statement which has been circulated entitled "Operating revenues of Class I carriers of freight serving Florida East Coast territory compared with the carriers operating north of Jacksonville between points in Georgia, South Carolina, and North Carolina and eastern points", that statement? A. That is it, sir.

Q. Is it true and correct? A. To the best of my knowledge and belief.

Q. I will refer to your statement as Exhibit P for identification. How many Class I carriers, motor carriers, are there which operate along the Florida East Coast? A. There are only three, sir.

Q. Are they shown on this list? A. They are shown at the beginning of the list, the Central Truck Lines, Great Southern Trucking Company, and Tamiami Trail Tours.

Q. Now, from what source did you obtain the operating revenues shown for each of these carriers for each of the years [224] through 1950? A. There were two sources used. Transport Statistics, Incorporated, of Washington, D. C., American Trucking Associations, of Washington, D. C., compiled from the annual reports of the individual carriers to the Interstate Commerce Commission.

Q. Now, what is the nature of the operations of the carriers in the second group, marked "Atlantic Coast, to the Southeast"? A. "South to east".

Q. South to east; I am sorry. A. Generally those carriers operate from Jacksonville, Atlanta, Augusta, Charlotte, up the east coast to New York, Philadelphia, and most of them into New England. Now, generally speaking that is the principal operation of each of them, with the exeption possibly of Associated Transport, who operates

also to the east central territory, and carriers like Roadway Express, who have quite a large operation, and operate also into—one line into Texas and another into Kansas City.

Q. Now, what is the nature of the operations of the carriers marked "South Atlantic, Georgia, and South Carolina"? A. They are wholly southern operated carriers. Operate only in the southern states.

Q. And the third group, "Central South to Central"? A. Those carriers operate from points such as Atlanta, Augusta, Charlotte, Birmingham, and Chattanooga, into Cincinnati, [235] Chicago, and into midwestern territory.

Q. Now, while you were with the Central of Georgia, and subsequently, did you acquire information as to the relative intensity of motor truck competition as between the Florida carriers and the other southern and southeastern carriers? A. Yes. I should say that the relative competition is much greater in the other territories.

Q. Than it is along the Florida East Coast? A. Than it is along the Florida East Coast.

Q. Is that opinion strengthened or borne out by this exhibit? A. That it is; yes, sir.

Mr. Bourne: Excuse me, Mr. Turney. The last number I had or letter I had was N.

Mr. Turney: I had another witness that was coming before this witness. He has two exhibits that have been marked N and O. I am still trying to maintain the alphabet, but a little under difficulties.

By Mr. Turney:

Q. Mr. Stanfield, in connection with your work, is it necessary for you to gather information with respect to the waterway tonnage handled along the Florida East Coast? A. Yes, it is.

Q. I hand you the statement which I have identified as Exhibit No. 2 and entitled "Inland waterway traffic on

BLEED THROUGH

intra-[226-7]coastal waterway between Jacksonville and Miami", and ask you what that statement is (tendering paper to the witness). A. (Witness examining paper) That is a statement of the primary barge traffic or small boat traffic handled along the intracoastal waterway between Jacksonville and Miami.

Q. What is the situation with respect to that traffic at the present time, compared with the period before and during the war? A. It will speak for itself as to tonnages. In 1936 to 1940 the range was between two hundred fifty thousand net tons on up to over four hundred thousand net tons per year. That has dropped off completely, until in 1949 the total was twenty-five thousand—I am reading from the right-hand column, incidentally the general freight column. We have separated the petroleum products from general freight for rather obvious reasons.

Q. And what are they? A. The petroleum tonnage shown here is peculiarly handled in that a large part of it is for bunkering in. For instance, a movement from Port Everglades, Florida, up to West Palm Beach goes in barges direct to shipside for bunkering of vessels in West Palm Beach. That tonnage is set down in here. It was therefore separated to pull out the dry cargo from the petroleum cargoes.

Q. Well, has that tonnage ever been handled by railroad in recent years? [228] A. There again, the statement speaks for itself. In 1937, 1938, 1939, the tonnages were practically identical with the 1950 tonnages. During the war years, that petroleum tonnage increased in the intracoastal waterway because much of it was brought into Port Everglades and moved on up, not only to Jacksonville but on up through the intracoastal waterway.

Q. You say during the war? A. During the war, yes.

Q. And it is continued at substantially—or slightly below that level since the war? A. That is correct; yes, sir.

Q. In your opinion, is that column marked "petroleum

produts" ever any diversion of freight from the Florida East Coast? A. Why, no, sir.

Q. Is that traffic which it could handle under normal conditions? A. Possibly, but more probably not.

Q. Now, you regard as divertible traffic the traffic marked "other than petroleum products"? A. That is correct.

Q. And does that show any substantial diversion in recent years, or any growing diversion in recent years from the rail carrier to the water carrier? A. Why, it shows the opposite, sir.

[229] Q. Now, have you prepared the statement which I have identified as Exhibit R entitled "Total coastwise receipts and shipments at east coast Florida ports, with separation of petroleum products from other coastwise tonnage"? A. Yes, sir.

Q. Now, before you deal with this exhibit, will you tell the Court generally what the situation is with respect to coastwise tonnage to and from South Atlantic ports, and particularly those located in Florida? A. Prior to the war, there were five coastwise lines operating into the lower east coast Florida ports. Today there are none. The only coastwise operation today of general cargo is an operation from New York into Savannah, Georgia, the Seatrain Lines, Inc. They have only been in operation two or three months. That is the only operation in effect today. Since the war there have been two trials at coastwise operation, one by the Clyde Line, in July of 1946, through Maritime Commission subsidies. The Pan-Atlantic Steamship line operated from June 1947, to November 1951, into Jacksonville and Miami from the North Atlantic ports. That operation has been suspended, either temporarily or at least it is not operating at the present time.

Q. Now, again, the separation should be made with respect to the petroleum products? A. For the same reason as outlined before.

[230] Q. Now, this exhibit last mentioned? Is that in two pages? A. That is in two pages, sir.

BLEED THROUGH

Q. The second page is merely a continuation of the first? A. It shows the ports of Palm Beach and Fort Pierce.

Q. Now, will you please turn to your third exhibit, entitled "Import and export traffic through East Coast Florida ports", which I have marked for identification as Exhibit S, and tell the Court what this exhibit purports to show? A. This exhibit, as far as the lower east coast ports, shows two very important things: One is the enormous growth of the import-export traffic through the port of Palm Beach. For the last four years shown—that is the extreme right-hand column—the traffic has more than doubled.

Q. Let me ask you whether or not as a matter of fact that a large part of your import and export traffic to and from these ports receives a rail haul on the Florida East Coast or the Seaboard to and from the South Florida ports? A. I would have to answer that in two parts. To Palm Beach it is nearly one hundred perecent rail haul traffic. That is a car ferry operation from Palm Beach to Havana, and either has a rail haul prior or subsequent to water movement.

Q. That is practically all rail-water movement? A. That is correct.

Q. Yes. [231] A. As to Miami and Port Everglades, those are—there is no way of identifying how much or what percentage moves by rail and what percentage moves by truck, or what percentage is consumed or produced locally.

Q. But some part of it does move by rail? A. It does.

Q. And that part you do not know? A. That is right.

Q. Now, have you made an investigation to determine the growth in population and manufacturing establishments along the Florida East Coast counties? A. Yes, I have.

Q. Is the result of the investigation shown in the single sheet exhibit which I have marked T? A. It is.

Q. What counties are included on this sheet? A. The east coast counties served by the Florida East Coast Railway, beginning with Duval and through Dade, with the exception of Okeechobee, which is an interior county.

Q. Now, that is all of the counties served by the Florida East Coast, with the exception of Okeechobee? A. That is correct.

Q. What has been the increase in population between the two dates of census, the 1940 and 1950? A. Roughly seventy-eight percent, sir.

[232] Q. Now, where did you obtain the information with respect to the number of establishments, the number of employees, and the salaries and wages for the years 1939 and 1947? A. Those were obtained from the Bureau of Census, Census of Manufacturers for the years 1939 and 1947.

Q. Is there any similar census for 1951? A. No, sir; there is not.

Q. Or any later year than '47? A. No, sir; there is not.

Q. Now, how did you go about making the estimate for the year 1951? A. The estimate for 1951 was based primarily on a survey which the Florida State Employment Commission made, in which the Florida State Chamber of Commerce assisted in during the year 1951. The period ranged from around May through November of 1951. Using that survey as a base

Q. Well, now. Will you pardon me just a minute—now, what did that survey show? A. That survey showed the manufacturing establishments.

Q. By name? A. By name.

Q. And address? A. Address, number of employees, by groups. The products manufactured, and their location, the town and county.

Q. Now, that is a printed book? [233] A. That is a printed book.

Q. Put out by the State Employment Commission? A. That's right.

Q. Now, how did you go about checking that report and obtaining the number of employees and their salaries and wages? A. That report then served as a base of operation, so to speak. Each of the firms listed in the book were con-

BLEED THROUGH

tacted by telephone or in person during the past two weeks. There have been approximately twenty or twenty-five people engaged in the work, and each of them have been contacted and many of them eliminated, many new ones added. So the estimate of establishment employees, salaries and wages, is just as late as it could possibly be made, and is accurate.

Q. And it is based on an actual survey of contacting the individual plants? A. That is correct.

Q. And you have those by names, if it is desired, in your working papers? A. Yes, sir.

Q. Now, what does that show with respect to the relative gain in manufacturing along the Florida East Coast, matching that gain in employees—well, in establishments, employees, and employees' salaries and wages of 1951, compared with the earlier period? A. The remarkable—most remarkable gains, of course, have [234] been made in the extremely lower east coast counties, Palm Beach, Broward, and Dade. Palm Beach has more than doubled over 1939. Broward County almost four times the 1939 number of establishments. And Dade County slightly over three times the 1939 establishments, and more than double the 1947.

Q. Now, what does the information with respect to the salaries and wages show? A. Salaries and wages, although reflecting a certain amount of inflation, still, the 1947 gain over 1939 for Dade County, for instance, is roughly eight times; and the 1951 gain over even 1947 is almost five times the 1947 amount of wages.

Q. Do you care to express any opinion about the effect of this growth in manufacturing and population upon the potential traffic of the Florida East Coast Railway? A. It is impossible to estimate—make any estimate at all of the products manufactured which would be available for rail haul, or what rail haul would be involved on the materials going into manufacturers, but it is very evident that with this much commercial activity, the economy of the community is such that there is bound to be additional rail haul traffic.

Q. Do you care to appraise that as substantial or insubstantial, or what? A. I would say it was very substantial.

Q. Now, the last exhibit which you have prepared and which I have identified as an exhibit is entitled "Comparison of Hotels, [235] apartments, roominghouses and motor courts located in Florida East Coast territory, October 1, 1944, compared with October 1st, 1951"? [236] A. I did.

Q. What is the source of it? A. The source is the State Hotel Commission of the State of Florida.

Q. What does this exhibit show with respect to the growth in vicinities or rather the growth in hotel roominghouses and motor courts, particularly in the southern counties along the east coast? A. The exhibit shows increases in number of rooming houses ranging from fifty percent to—number of lodging houses, hotel apartments, rooming houses and motor courts for the three counties, Palm Beach, Broward and Dade; an increase of sixty-two percent, and in number of rooms, those three counties increased over ninety-two percent.

Q. Taking all of the counties along the Florida East Coast, what was the percentage of increase, '51 over '44? A. In number of establishments, fifty-two percent, and in number of rooms available, seventy-five percent.

Q. Now, how does that compare with the balance of the State of Florida? A. The balance of the State of Florida increased twenty-eight percent, and sixty-three percent respectively.

Mr. Turney: If your Honor please, we ask that the exhibits identified as P, Q, R, S and T, be received in evidence.

[237] The Court: Read me the title of the ones designated as operating revenues, class one motor carriers.

Mr. Turney: Yes.

The Court: All right.

BLEED THROUGH

. . . The instruments last above referred to were received and filed in evidence and marked Exhibits P, Q, R, S, and T, respectively.

The Court: Which one is that you have got there?

Mr. Turney: I overlooked something, if your Honor please. Exhibit P should have been in two pages. The first page deals with operating revenue. The second page deals with the tons of revenue freight carried. They look so much alike, that I did not catch that difference, and I——

The Court: Well, then, that sort of changes the lettering, from there on down?

Mr. Turney: I suggest that it be marked P-1, because it's of the same nature as the first.

The Court: All right.

By Mr. Turney:

Q. I would like to ask one question. Mr. Stanfield, will you tell us what the difference is between the Exhibit marked for identification P, and that marked for identification P-1, which is entitled "Tons of Revenue Freight Carried by Class One Motor Carriers Serving Florida East Coast Territory, compared with carriers operating north of Jacksonville [238] between points in Georgia, South Carolina, North Carolina, northern and eastern points". A. The purpose of that exhibit was to back up and clarify in my own mind that there was substantial tonnage increases in these carriers—by these carriers, and that the increase in revenues was not due solely to rate increases, but the tonnage actually increased. That was the purpose in preparing that exhibit.

Q. And, to cover my embarrassment, that was something you added after I thought of it, is that correct? A. That's right.

Mr. Turney: We ask that these exhibits P, P-1, Q, R, S, T be received in evidence.

The Court: Very well, file them in evidence.

. . . The instrument last above referred to, Exhibit P-1, was received and filed in evidence and marked P-1, the others having been heretofore received.

Mr. Turney: That is all, on direct.
The Court: All right, take him on cross.

Cross examination by Mr. Bourne:

Q. These exhibits, P and P-1, those relate to Class One motor carriers, is that correct? A. Those relate to Class One motor carriers of freight in intercity service.

[239] Q. They don't cover exempt contract carriers, do they? A. No, sir, they do not.

Q. Do they cover lease trucks? A. Only insofar as these class one motor carriers lease equipment.

Q. You don't know whether exempt contract carriers and lease trucks are an important factor of transportation on the Florida East Coast? A. I do not have such information available, sir.

Mr. Bourne: That is all.
Mr. Turney: No redirect. Stand down.

(Witness excused)

Mr. John H. Bickley, having been previously produced and first duly sworn as a witness, was recalled to the witness stand and further testified as follows:

Further direct examination by Mr. Turney:

Q. Mr. Bickley, will you please refer to your Exhibit D. A. Is that B or "D"?

Q. D. As in "doubt".

Mr. Bourne: I still don't get that. Is it D?
Mr. Turney: D.

A. I have it.

BLEED THROUGH

[240] Q. Have you, from your investigation, formed an opinion as to the value of the Coast Line securities which would be issuable to the FEC creditors under the Fourth Plan of the Commission? A. I have a value; I have such, and the value is thirty-five million dollars.

Q. Does that includes the amount of the equipment trusts to be assumed by the Coast Line under that plan? A. No, sir That is the amount of Coast Line securities issuable under the Plan.

The Court: I am afraid you will have to give me that exhibit number again.

Mr. Turney: D.

The Court: D? That is what I thought. I haven't been able to get the connection here. Oh, I see. I have two pages here. Go ahead.

A. It's the item, comparable, your Honor, at line 9 under the 1951 Plan.

By Mr. Turney:

Q. Now, is there any other consideration that your audit has revealed that would be issuable or be payable by the Coast Line under that plan? A. Yes, the Coast Line would assume the equipment obligations outstanding at the date of consummation of the Plan.

Q. Well, what would those equipment obligations be [241] as of the date just prior to the receipt of the last five Diesel locomotives? A. The amount would have been, at December 31, 1951, the sum of $4,258,107.00.

Q. And the additional amount for the five Diesels? A. About nine hundred thousand dollars.

Q. And the total amount to be assumed? A. Would be $5,150,000.

Q. Now, that is the amount to be added to the securities? The five million— A. That should be added to——

Q. Now, how much cash is payable by the Coast Line under this plan? A. $4,125,000—pardon me. $4,000,000.

Q. And is that net, or is there any repayment back, of Trustees' cash? A. Yes, sir. There would be payable by the East Coast, to the Coast Line, an equal amount.

Q. Now, what is—so, there is no cash? A. Well, in fact there would be a reduction of $125,000 when you compare cash items.

The Court: What do you mean, would be payable by the Florida East Coast, to the Coast Line, an equal amount? I don't quite understand it.

A. The Fourth Plan of the Commission provides that the [242] Coast Line should pay to the Debtor's estate, four million dollars in cash.

It also provided that the Debtor would turn over to Coast Line, a reserve—a cash reserve of three million dollars for construction of stations. And in addition, cash working capital—which is cash—in the amount of one million dollars.

It has already been shown that the Debtor has expended more than was required by the Commission's reserve in the Commission's Third and Fourth supplemental reports.

So that the three million dollars would be additional payment by the debtor to Coast Line.

Moreover, the cash working capital, or the cash payable to Coast Line to cover working capital, is just cash, the same as the cash to be received. So that cash payable——

The Court: I see.

A. And the cash receivable——

The Court: I see what you mean. The Coast Line pays over four million dollars, and they set aside from the estate of the Debtor, to the benefit of the Coast Line, if they get the road, four million dollars.

A. Yes.

BLEED THROUGH

The Court: By the way, look at your Exhibit D, line 8. Net Cash Payable by Coast Line, Exhibit C, "blank", under the Fourth Plan. Why is that left blank there?

[243] A. Because——

Q. That 1951 Plan shown in the Fifth column, is the fourth plan, is it not? The one designated as '51 plan, is the Fourth Plan? A. Yes, sir.

Q. And the one designated as the former plan, that is the Third Plan? A. That is right, sir.

Q. Now, Exhibit D shows, with reference to the latter—Third Plan—on Line 8, Net Cash payable, $3,625,000.00, but it is "blank" under the Fourth Plan. Why is that? A. The reason may be found, your Honor, by referring back to Exhibit "C". Lines 20 and 21 and 22. There it is shown that there were three millian—a net of $3,625,000 payable by the Coast Line to the Debtor under the Third Plan.

Q. Yes. A. As just explained under the fourth plan——

Q. Oh, I see. You take the position that none is payable because those two amounts cancel, is that it? A. That is right, sir.

The Court: I see.

By Mr. Turney:

Q. Now, what is the total amount of market value of the package, plus the Equipment trusts?—to be paid by the Coast Line. [244] A. Wait——

Q. Well, isn't it— A. I can make the additions directly from here.

Q. Isn't it the sum of thirty-five million plus the five million of equipment trusts? A. It is the sum of thirty-five million plus five million of equipment trusts, or a total of approximately forty million dollars.

Q. Now, turning from the valuation of the Coast Line securities, do you believe that it is posible, accurately or

fairly, to approximate the value of securities which might be issued in a hypothetical internal reorganization at this time? A. No, sir, there would be too many unknown factors in any equation or formula that might be applied. It could be assumed that—and I believe it to be true—that the bonds would be worth their par. From that point we would have to look to the pecular conditions that would obtain. And I think those conditions would give the most positive evidence of what the value of the stock would be.

I understand that under the Bondholders Plan, the St. Joe Paper Company will take twenty-five million dollars of stock as a permanent investment. As long as that stock is held by St. Joe, as a permanent investment, it would be worth, I believe, the twenty-five million dollars.

[245] To supplement that, it may be added that St. Joe Paper Company would have the right to receive fifty percent of their interest in bonds. They have elected to take stock. So I feel that that choice—in my opinion that decision on the part of St. Joe Paper Company is ample evidence of the fact that the stock must be worth its par value.

Now, I started off by saying that when you are dealing with the securities of an unorganized company, it's very difficult to make an appraisal unless you have attending circumstances that give more assurance of what might happen on the market.

And I believe that when St. Joe Paper Company elected to take the stock in place of the bonds, it thereby valued the stock at par. And, having done so, it would continue to hold—to price or to value that stock at par.

Now, if there were any other stock on the market, I believe the appraisal placed on the stock by the holder of a very large proportion of the stock, would tend to set the market price for it. That is, others would hold for that price.

Q. Well, Mr. Bickley, under the Bondholders Plan, any bondholder who elects to take bonds, may convert into stock at any time? A. He may.

BLEED THROUGH

Q. At the beginning, if twenty million elected to take [246] bonds and St. Joe elected to take stock, St. Joe would own all the stock? A. Yes, sir.

Q. Under those circumstances, would there be any market for the stock? A. No, sir. St. Joe has it all.

Q. Now, with respect to any of the other bondholders who initially elect to take stock instead of bonds, at what price must they necessarily value it? A. They are placing a value of $100. per unit—that is, par value.

Q. Now, look please, at your Exhibit J-1. A. All right.

Q. You have set up a capital obligation under the Bondholders Plan, of $58,000,000., consisting of a twenty million dollars of First Mortgage Bonds presently issuable under the proposed plan and the remainder either in equipment trusts or in Diesel facilities? A. That is right.

Q. Making a total debt of thirty-three million two hundred and sixty thousand? A. Yes, sir.

Q. Now, let's assume for the purposes of this question, that that capitalization of—that that would be the capitalization of the reorganized debtor. Do you believe [247] or is it your opinion that the decision of the St. Joe Paper Company, that the stock would be worth par, is justified by the potential earnings and value of the property as you have found it? A. I do, indeed.

Q. And you believe that it is a provident decision? A. I think it was a sound decision.

Mr. Turney: You may cross examine.

The Court: I did not limit you to that one question.

Mr. Turney: I told you my arithmetic was bad, your Honor, and I am very sorry.

Cross examination by Mr. Bourne:

Q. Mr. Bickley, you estimated the earning power of the Florida East Coast at $4,600,000. a year. A. Yes, I think on an average, in the foreseeable future and the near foreseeable future, it would be $4,600,000.

Q. Have you calculated what the earnings, per share, would be under the Bondholders Plan, with earnings of $4,600,000. a year? A. I have made such a calculation. I don't have the figures here.

Q. Well, would you mind just taking a look at this sheet? It's not very difficult. [248] A. Yes, certainly. (Examining paper.)

Q. I will change my question to read, the St. Joe Paper Company Plan, and having reference to the Plan that was before the Commission in 1950. A. I——

Mr. Turney: Before you answer, I want to see what he handed to you.

A. Here it is.

Mr. Turney: (Examining paper) Here it is. (Tendering paper to witness)

A. This shows a balance for stock of $1,764,000.

By Mr. Bourne:

Q. And how much is that per share?

Mr. Turney: What is this?

A. Beg pardon?

Mr. Turney: What "this" is, should be put in the record.

By Mr. Bourne:

Q. My original question was, what would the earnings per share be, based upon your forecast of $4,600,000., and the capital structure proposed in the St. Joe Paper Company's 1950 plan. A. Your table shows $7.05 per share on 250,000 shares.

BLEED THROUGH

Q. Well, would you take just a second and check and see whether that's correct or not? The arithmetic is very simple. [249] A. (Examining paper) I don't want to mark your paper, Mr. Bourne.

Q. You may mark the paper if you wish. A. I have checked your figures, and with $4,600,000. of available income and interest on debts, at $925,000. and with a fifty-two percent federal income tax rate, there would be available to shareholders, $1,764,000., which would be at the rate of about 7.1 percent on the par value of the stock.

Q. And how much would it be a share, please? A. $7.05, and since the stock is $100. par, the amount per share is the same as the percent. earned on the stock.

Q. You used the fifty-two percent. tax rate in exhibit J, yourself, did you not? A. Yes, sir.

Q. You think that is suitable, do you not? A. Yes, I think a fifty-two percent tax rate is suitable at the present time.

Q. Are you familiar with the concept of fair market value as defined in the regulations under the Internal Revenue Code? A. Fair Market Value, as I understand it, is price at which goods, exchanged between willing and able buyers and sellers, neither being under compulsion to act.

Q. And isn't it quite customary, in making valuations, to determine fair market values on the basis of the [250] assumption that there are willing sellers and willing buyers? A. Not always. The market price is influenced by many considerations. If, for example, and, under the Bondholders Plan with the St. Joe Paper Company commitment, the stock is held by one who has no desire to sell, and second, that holder has obtained his interest after deciding to take stock, rather than bonds, then the best evidence of the true value of that stock would be what that owner would be willing to accept.

Mr. Bourne: Mr. Reporter, would you repeat that question again, please?

. . . The question was read.

By Mr. Bourne:

Q. The question is, Mr. Bickley, is that not quite customary. A. I don't believe you can establish any rules as to what is customary with respect to property values.

Property values depend upon many considerations. There may be no test of what a willing buyer and a willing seller would agree upon, other than the fact that there is one who owns and is unwilling to sell for less than the value he placed under the security when he accepted it, in lieu of bonds.

And, you have to look at the circumstances, is what I am trying—the idea I am trying to convey.

[251] Q. You, in your direct testimony, put a value on securities that would be issued by the Atlantic Coast Line under the Fourth Plan, did you not? A. Yes, sir.

Q. Are you familiar with the statement in the joint objections which the St. Joe Paper Company, among others, has signed, which reads as follows:

"The Coast Line urges that the proper contention in considering the fairness and equity of the plan was the speculative prices on a non-existent market of the hypothetical issues of an unorganized successor corporation to the debtor."

Are you familiar with that statement? A. I have read it.

Q. Now, when you, yourself, put a value on the stock and bonds—other than the common stock—which would be issued under the Fourth Plan, you put a value on the basis of a non-existent market, did you not? That is to say, there is no existing market? A. Under the Fourth Plan?

Q. There is no present market for the First Divisional Mortgage bonds or the general income bonds, or for the preferred stock, is there? A. No, but I believe when you are dealing with bonds, you can very closely approximate what the worth is. [252] Aside from the market. That can be done in relation to general interest rates for a certain general type of security.

BLEED THROUGH

The Interstate Commerce Commission placed a value on those bonds and I would not disagree with them. They placed the value on the preferred stock—new preferred stock to be issued by Coast Line. I think it's possible to do that. It placed a value on common stock for which there were then, and are now, market quotations. But, I think those circumstances are fundamentally different from those that would prevail under the Bondholders Plan, and especially with respect to the Common stock.

Q. Well, isn't this true, Mr. Bickley? The essence of your testimony is that because St. Joe Paper Company says that it will take the stock and that they won't sell it, hence it will never be less than par, isn't that the heart of what you say? A. No, that is not the essence of it or the substance of it. The substance of it is that someone who had a choice to take either bonds or stock, accepted the stock in lieu of the bonds and placed a value on it.

Now, that, to me, is the best evidence on market value or what that stock would sell for between a willing buyer and a willing seller, if it were sold.

In other words, stating it briefly, St. Joe establishes the market.

[253] Q. Wouldn't that method of valuing that particular stock have a rather serious infirmity in it, if it turned out the St. Joe Paper Company had another reason having nothing to do with value, for wanting to have the stock? A. Well, all reasons for investment are embodied in one thing. What the owner or the buyer holds his property to be worth. Now, that can be influenced by a great variety of considerations.

Q. Is there any other form of valuation where the price asked by the owner of a property establishes the fair market value? A. Where the price asked establishes the fair market value, is a question. Well, there are asked prices and there are bid prices. But, when the asked is not met by a bid, then the asked price is the market. You see that in securities.

Q. Is that true as you understand the principle of valuation as laid down in the Internal Revenue Code Regulations? Or, is it true in any other valuations— A. Yes.

Q. — That the asked price establishes the market value. A. I did not say that the asking price establishes the market, when there is an accepted bid that is below the asked. But, when one who holds property asks a certain price for that property, and refuses to sell for whatever reason, at [254] less than his established price, then, what he asks, in my judgment, places the value on his property.

The Court: What do you do when the bidder meets the price?

A. Well, your Honor, there may not be a bidder who meets the price. That is, there may not be a transaction. So then, it seems to me, that the measure of value is what the holder places on it. Now, someone may say to him——

Q. You are talking about market value. You cannot determine market value because he asks so much and won't take less, and somebody comes along and buys at that figure, then, there is a market value. A. Well, then, there is a transaction, yes.

The Court: That is what I have in mind.

By Mr. Bourne:

Q. You are not assuming here, Mr. Bickley, that anybody else is going to ask $100. a share for this stock? A. I don't have to base my construction on any such assumption.

Q. Well, I thought the Judge's questions implied you did. A. Well, we don't know what others may do. It's not beyond the realm of possibility that others will elect to do what St. Joe is offering to do.

Q. Well, have you compared the earnings, per share, of [255] that stock on the basis of your own calculations, based on your own forecasts, what the earnings per share

BLEED THROUGH

of absolutely top grade railroad stocks, and the current market prices? A. I know something about and I partially maintain information on those stocks and bonds, yes. On the different types of enterprise. And in my judgment, the earnings of the Debtor, or the earnings of the property would be adequate, from an earning standpoint, to maintain this stock at par.

Q. It's your considered opinion— A. That is——

Q. —That a stock of the Florida East Coast Railway Company as reorganized, earning $7.83, would sell at par? A. Yes.

Q. Are you familiar with the testimony of Mr. Wendell Reuss, of McLaughlin, Reuss & Company, experts for St. Joe Paper Company? A. No, I have heard about it, but I have no recollection of it.

Q. You are not familiar with his testimony? A. No, I would not say that I am familiar with his testimony.

Q. Can you name another railroad in the United States, other than a coal railroad, selling at a price earnings ratio which will produce par for a common stock earning $7.83? [256] A. In the first place, I don't think that the price earnings ratio is the most significant criterion of stock value. I think the dividend yield is more significant, because dividend yields measures the payment to the owner of a stock in relation to the price he has paid or is willing to pay. Or——

Q. What dividend yield did you assume when you answered my question——.

Mr. Turney: I suggest the witness be permitted to answer the question before he is interrupted.

By Mr. Bourne: I thought he was through.

A. I believe a yield of around six per cent might be assumed. That, if the stock pays $6.00 per share on a par of a hundred, at six percent yield, yes. For this property, with the growth prospect, I think a six percent yield would hold that stock at par. There are reports that say——

Q. Well, haven't you assumed quite a little in the growth prospects when you come out with a forecast of earnings just double the Commission's? A. Well, I—you are asking my opinion now, about my assumption. I know the Commission approved a figure of $2,300,000. before federal income taxes and fixed charges. I know the Commission did that. And I arrived at an estimate of four million six. My testimony is made today based upon more recent happenings. The Commission's estimate was [257] made sometime ago. And, since the Commission's opinion, many things have happened in this country.

At that time our economy was not at the high level that exists today, which I believe must continue for some time.

Now, when I speak of growth prospects, I think that there are growth prospects.

I don't believe for one moment that you can look at average earnings over a past period of years and say that the average for five years, two years, three years, ten years, or whatever period you may select, is a sole indication of what the earnings will be.

Now, my understanding is that when a property—a going business is appraised in relation to earnings, there is an appraisal, not of the past, but of the reasonably prospective future, and the past is just one of the things to be considered in making a projection into the future.

Q. Now, would you answer my question, please? A. May I have it?

Q. When you make your forecast of $4,600,000. available for income taxes and fixed charges, didn't you assume a growth prospect? A. No, because I stated, Mr. Bourne, with a condition existing at the close of 1951.

There, again, is just the fact that there is more experience available than when the Commission handed down its [258] opinion. We know that——

Q. The question really called for yes or no, Mr. Bickley? A. May I have that question again, please. I am sorry.

The question was read.

BLEED THROUGH

A. I assumed growth above the level at the time the Commission made its decision. Now, you are asking me to compare my estimate of earnings today with the Commission's estimate made over a year ago. Now, things have happened since then. There has been another year of experience. We had the full year 1951 available. In '51, it marked the beginning of an upturn,——

Q. I am going to put another question, Mr. Bickley. You have answered that. The next question is this: is your expression of opinion to the effect that the stock would sell at par or better if there were earnings as forecast by you, of $4,600,000 and the St. Joe Paper Company's capital structure, as a result of which there would be $7.83 earned—based on the expectation that there would be a six dollar dividend? A. You say something about $7.80 earned.

Q. Well, you have the paper, now. Is it seven— A. Yes, sir, $7.06.

Q. $7.06, excuse me. A. May I have that question, please?

Q. What I asked you, Mr. Bickley—I will put another [259] question. When I asked you whether you thought the stock of the reorganized Florida East Coast, earning $7.06 would sell at $100 a share, you said that the dividends were important, and that you assumed a six percent yield. Now, my question is, when you expressed the opinion that it would sell at $100 a share, was it on the assumption that, with earnings of $7.06, there would be dividends of $6.00? A. Oh, yes. I am speaking again, now, on an average. On an average, it seems to me, that this property, when reorganized, would have a high dividend pay-out.

The complete Dieselization may come about very shortly. There will be adequate internal sources to convert the equipment obligations. Earnings will cover the interest with adequate margin. And so it seems to me that the company might well pay six dollars or maybe more in relation to the $7.00. I am speaking now on an average.

Q. Now, I would like to show you Exhibit "A", please. Have you got Exhibit "A" in front of you? A. Yes, sir.

Q. In the third column you have listed what is called depreciation accruals. Are those depreciation accruals only with respect to the items referred to in the preceding column? A. That is so, yes, sir.

Q. Speak up so the Reporter can hear you. The answer [260] is yes? A. Yes, sir.

Q. You do not, on exhibit A, in any way, reflect the earnings, the increased earnings derived, let us say, from the five present Diesel locomotives and the twenty-eight passenger cars, do you? A. Why—no.

Q. Would you look at Exhibit B, please. How was the item of depreciation accruals in the second column, line 13, calculated? A. Well, perhaps I did not get the exhibit reference. Did you say——

Q. Exhibit B. A. B.

Q. B as in "boy". A. B, line 13, depreciation accruals, comes from the records of the company as given to me by the Trustees.

Q. Well, doesn't that involve an interpretation of the Third Plan as to how much the depreciation accruals were? What is your understanding of the— A. Well, the Third Plan forecasts certain expenditures and certain depreciation. Now the amount of the second column of line 13 is the depreciation, the actual depreciation accruals as given to me by the Trustees.

Q. All right. Now, would you just detail that to me, [261] please? The actual depreciation accruals over what period? A. From the date of the construction of this property——

Q. The date of what? A. Of the construction, because depreciation begins after property is construction—is constructed.

Q. Is the depreciation in this case limited to the depreciation on the things financed out of the reserves? A. The depreciation is related to the property listed—let me see.

BLEED THROUGH

Q. You say it is related to it. Is it limited to it or does it include depreciation of other items? A. No, it would be limited to and apply only to property on which the expenditures are reported in this statement.

The Trustees prepared an exhibit or a statement at my request showing the depreciation accrued against property on which the expenditures had been made.

Q. That is, the expenditures referred to in Exhibit B? A. In the Exhibit B, yes, sir. Most of that depreciation is on the equipment on which the expenditures are listed in the upper part of the table.

Q. Now, the next question I am going to ask you about this exhibit, and in putting it, I want to say I am not asking for discussion of the subject, I am just asking for the effect of the calculation you have made. Is it or is it not a fact that that calculation is based on your interpretation [262] of the Third Plan under which an excess expenditure in one reserve would wipe out another reserve. A. That is not——

Q. Perhaps I asked that about the wrong exhibit. I will withdraw the question. Will you turn now to Exhibit C—no, to Exhibit D. Are you familiar with the provision of the Fourth Plan with reference to the Peninsular & Occidental Steamship Dock property and the Hialeah tracks? A. I am not sure that I am.

Q. You haven't taken that provision into account in any of your exhibits, have you? A. There is nothing included here having reference to either of those properties.

Q. What is your understanding with respect to the right of the holders of the preferred stock, which would be issued under the Plan, provided in the Fourth report, or approved in the Fourth report? A. They would have the right to dividends of $4.00 a share and such rights would have priority over the common dividends but would be subordinate to the debts. Is that what you have in mind?

Q. That's exactly what I have in mind, but I raised the question whether you didn't know that stock was a participating stock and a convertible stock. A. I am not sure

about that. I wouldn't say that I do [263] recall that exactly. Now, if you tell me that that is right, and I do know that I examined this stock very carefully—the terms of the stock—at the time I made my decisions, but I could not quote to you precisely all the terms of the stock. Whatever the terms were, or are, I considered then, the matter on appraisal of the property. In other words——

Q. You didn't have all those terms in mind when you made all these exhibits, did you? A. Well, when I was making decisions, I was referring to the Fourth Plan. My only point is, Mr. Bourne, that I don't want to say here that I remember completely all the provisions of the stock issue. I know I considered them—I knew about them and I considered them when I made my judgment.

Q. Well, let's just take a look at Exhibit J, if you don't mind. You have got two right hand columns on Exhibit J which contain calculations which are based on the ratio of the outstanding shares of Coast Line stock, common stock, and the common stock which would be issuable to the Florida East Coast Creditors, haven't you? A. Read that question again?

The question was read.

A. That is — the ratio is established when column — the amounts in column 6 are developed. That is, that the presently outstanding Coast Line shares are about 13.7 high.

Q. Well, now, if you accept my statement that the [264] preferred stock, which would be issuable under the plan approved by the Commission, is participating, and that there are ninety thousand shares, the ratio figure is wrong, and all the figures in the last two columns are wrong, aren't they? A. Well, I had to take a condition——

Q. Sir? A. Well, I had to take a condition as it's presumed by the Plan. Namely, that ninety thousand shares of preferred stock and sixty thousand shares of common stock would be issued. Now, if all of the preferred became—were converted to common, then of course the ratio would change and the next to the last column would change.

BLEED THROUGH

Q. Well, let me ask you this, especially. Is there an important difference between the claim on undistributed earnings held by the man who has a share of participating preferred stock which is convertible into common stock on the one hand, and the man who has the common stock? [265] A. The man who has the share of preferred stock has a potential participation in common earnings, because he may if he desires convert to the common.

Q. And he has a participation, even without conversion, to the extent of dividends, doesn't he? A. Well, he has a participation to the extent of dividends he receives. I was thinking that at random. But as long as he holds the convertible stock, his participation in common earnings, like I said, would be a potential participation. That is something he may gain the right to have.

Q. Something he has got a call on, isn't it? A. Yes, sir. He has a call on it.

Q. And the common stockholder doesn't have any, except a call on undistributed earnings, either, does he? A. Now, what do you mean by "call on"?

Q. Well, is it—— A. That the common stockholders may call upon and compel the directors to distribute undistributed earnings?

Q. No. I am not quibbling about words. A. I am not either.

Q. I mean that a common stockholder has a pro rata beneficial interest in undistributed earnings? A. Yes, sir.

Q. And I submit to you that the preferred stockholder who is entitled to participate with the common stock and who has [266] the right to convert into common stock has got, for all intents and purposes, just about the same thing that the common stockholder has got. Anyhow, for all purposes that make any sense in connection with this Plan? A. Well, incidentally, there are too many "ifs" in that. I say that for this reason. If you are asking me to assume that the preferred shareholders will convert, yes. Now, I have already said—and I hope that I say what I have in

mind: The preferred shareholder who has stock which is convertible certainly has a potential participation in undistributed earnings.

Q. Now, will you look further, please, at Exhibit D. In answer to a question that Mr. Turney put to you, didn't you say that it didn't make any difference what price you took the preferred stock at and the common stock at? Did you say that, substantially, in lines 5 and 6? A. No, I don't recall. I believe when we were comparing the Plans of par value, the—inasmuch as the preferred and the common, in dollar amount, were to be the same under both Plans, why they could be washed out for the purpose of comparison. I explained that in Exhibit D I used or applied the market prices or the prices found by the Commission.

Q. You don't remember making the statement I asked about in my question? A. Maybe I should have my memory refreshed. Will you read [267] the question, please?

The last preceding question was read, as follows:

"Now, will you look further, please, at exhibit D. In answer to a question that Mr. Turney put to you, didn't you say that it didn't make any difference what prices you took the preferred stock at and the common stock at? Did you say that substantially, in lines 5 and 6?" A. Oh, I see, now. We thought, as a matter of fact, for the purpose of this statement it wouldn't make any difference because the same par amount was to be issued under both plans. So, there, whether you call—that is for the purpose of the statement that is to determine the extent to which additional consideration payable by Coast Line cash and securities fails to cover the net expenditures for improvements—you could call it preferred stock or common stock, zero or ten million dollars, if you carry the same amount in both columns, it would be a washout as far as the last column is concerned.

Q. Well, now, the figure of thirty-five million dollars that you gave near the very close of your testimony is the value of the securities—was that relating to the thirty-four million, $34,380,000.00 on exhibit D? A. It was.

BLEED THROUGH

Q. Well, now, would you just tell me how the thirty-five million was made up, please? A. The thirty-five million is made up of one amount.

[268] Q. Made up of what? A. Of one amount—or, rather, the difference between the $34,380,000.00, and the thirty-five million is due to the re-pricing of one item, namely, the common stock.

Q. And that is repriced, is it? A. At 70.

Q. And that produces what total? A. For the common stock?

Q. No, for the—for the—all right, what total is the common stock—no, what total is the whole amount that is produced? As a matter of arithmetic, please? A. Yes, sir. They produce $34,740,000.00, which I then rounded out to thirty-five million on the basis of the stock alone.

Q. On the basis of what? A. On the basis of the common stock alone. So I, in fact——

Q. I don't follow you there. You said that you re-priced the common stock at 70 which brought you up to a total of $34,740,000.00. I am asking you how you get from $34,740,000.00 to $35,000,000.00; and you said something about the common stock item. A. Well, I had to explain that I did increase the price of the common stock. Now, the thirty-five million dollars is judgment to the extent of $260,000.00. That is, if you follow the arithmetic, what I would have come to, $34,740,000.00; and [269] I felt that for practical purposes that could be called thirty-five million dollars.

Q. Do you think that it is logical to value the common stock at 70 and value the preferred stock, which is preferred, participating, cumulative, and convertible, also at 70? A. Yes. I think that that is a reasonable conclusion.

Q. Which would you rather have, Mr. Bickley? A share of common stock or a share of 4% cumulative preferred stock which was participating and convertible into the common? A. Of course, I have a predisposition for common stock, even in connection with convertible preferred.

I would certainly just as soon have the common stock. If I had the preferred stock, as long as I held it, I would be getting the four dollar dividend; and I had just as soon have the common stock.

Q. Will you agree with me that the preferred stock would be worth at least as much as the common stock? A. In price, in dollar amount, yes. And that is why I made them the same.

Q. It would be worth at least as much, wouldn't it? A. Yes—well, I say it would be worth as much.

Q. I think you said the last quotation you heard of Atlantic Coast Line was 83. Why did you pick 70? A. It wasn't what I heard, it was what I read. I looked at the paper last night, I guess it was; it may have been last [270] week's quotation. The prices quoted, I think, are opening of 85 and closing of 83. Yes, they are the figures I gave.

Q. You understand that the preferred stock is not only convertible, but that it participates with the common after the common has received a dividend equal to the preferred dividend? A. Yes, sir.

Q. In other words, if it is a five dollar dividend, there has to be a five dollar dividend on the preferred? A. Yes, sir. That is my understanding.

Q. Well, that hasn't been your understanding all the time has it, Mr. Bickley? A. Well, I know that it is four dollars payable up to five dollars.

Q. It is what? Would you like to refresh your recollection by reading that provision of the Plan? A. Yes. I will do so. Well, I have here the section describing the preferred stock. The holders of the new preferred participate share for share with the holders of the common in all dividends in excess of four dollars per annum, but it didn't with dividends on preferred or cumulative up to twelve percent.

Q. It works out this way, doesn't it, Mr. Bickley, that the preferred has a preferred dividend of four dollars, then, if the common dividend is only four dollars, the preferred

BLEED THROUGH

gets nothing; but then, if the common dividend is five, six, or [271] seven, then the preferred gets five, six or seven? A. Yes. So in that respect it has some of the attributes of the common stock.

Q. Well, now, why did you take 70 for the value of the Atlantic Coast Line common stock? A. For the value of the Atlantic Coast Line common?

Q. Uh-huh. A. I believe that it is a fair appraisal of the stock. I quoted this morning the market prices of the Coast Line stock as averages over a period of years, and I don't believe you can look at that as it is selling there today and say that that is the real value of the stock. A market quotation has limited meaning. May I get an exhibit, please?

Q. Sir? A. May I get an exhibit, please?

Q. Yes, indeed. A. I will go ahead, Mr. Bourne. A market quotation is what certain shares sell and buy for on a certain day, and we know that in a day's trading, the price of a Coast Line—of a stock in the Coast Line range of value or market quotation could be as much as five dollars. And you take the market quotations from week to week, the variations, will be more from month to month, and still more, year to year. So I look—to the extent that I will be guided by market quotations, I will look at the stock over a period of years. Now, it might also [272] be pointed out that the stock market today is at one of its highest levels. I believe 1951 was about the second year in which the Dow-Jones Industrial average failed to fall below 200. It is a lot higher today. But I don't think you can use market quotations as of a certain day.

Q. How much did the Coast Line earn per share in 1951? A. $15.51.

Q. How much did it earn in 1950? A. I have that in here. $9.20.

The Court: It earned fifteen dollars—the Coast Line earned $15.51?

The Witness: Oh, I'm sorry——

The Court: Wait a minute. I am asking counsel. You say the Atlantic Coast Line—was the first statement correct that the Atlantic Coast Line earned $15.51 per share in 1951?

Mr. Bourne: Yes, sir. I believe it is correct.

The Court: What rate of yield would that be?

Mr. Bourne: Well, at the price of 85—of course, you have to figure the yield on the dividend. The yield generally means, in turn—you mean the price-earnings ratio—approximately five—between five and six times earnings. The evidence before the Commission showed that that is true of most of the railroads in the country.

The Court: All right.

The Witness: Well, Mr. Bourne, I was wrong in my answer.

[273] By Mr. Bourne:

Q. As to 1950? A. As to 1951. Did you ask me for 1950?

Q. Well, I asked you 1951 first. A. Well, the latest information I have on that is for the eleven months ended November '51, and that was $11.24 compared with $12.81 for the same period of last year, and I just don't have any of my information on the earnings of railroads for the entire year '51. The figure I quoted of $15.51 was for 1950.

Q. Well, assume, if you will, that the average over the two years was in excess of thirteen dollars a share a year—it was over fifteen dollars a share a year—do you still think that you ought to discount the present quoted market and put a value of 70 on it rather than 83? A. You are assuming an average earnings of——

Q. More than fifteen dollars a year in 1950 and 1951? A. Well, shall I use fifteen for your purpose?

Q. Yes. A. Well, that would be over twenty times earnings—no, $70.00 would be less than five times earnings.

BLEED THROUGH

Q. Do you think that is a good appraisal—I mean, you, as an expert—you think that is the situation, on further thought, justifying your discounting the present market down to 70? [274] A. Yes, for this purpose.

Q. Well, for what purpose? A. Well, for the purpose of determining what the bondholders of Florida East Coast would in fact receive in fair cash value if they accept the securities of Atlantic Coast Line.

Q. And— A. I don't think for that purpose it would be fair to take the market as of a certain date and say——

Q. So you say that—in judging the fairness of the Commission's plan, it is to be assumed that Atlantic Coast Line stock which earned on the average, has earned on the average, more than fifteen dollars a share in the past two years should be valued at 70? A. I think it is a fair——

Q. Wait a minute. A. Pardon.

Q. Wait a minute, please. Whereas, to determine what would be distributable under the St. Joe Paper Plan filed in 1950, it ought to be assumed first that the earnings will be double what the Commission forecast and then, that as a consequence of there then being seven dollars a share earnings, the stock will sell at a hundred? A. Yes.

Q. Now, would you look again to Exhibit D, please? A. At D?

[275] Q. D? A. Yes, sir.

Q. Exhibit D, Line 14 has an item of depreciation amounting to $429,000.00. Right? A. Yes, sir.

Q. Now, is that depreciation limited to the depreciation on the rail and equipment referred to in lines 11, 12, and 13? A. No, sir.

Q. Well, what depreciation is it? A. Well, that four hundred twenty-nine thousand dollars has a small amount applicable to the rail. It has——

Q. Well, I said 11, 12, and 13, Mr. Bickley. Eleven is rail. A. Yes, and the other equipment that is shown—yes, sir; it is applicable to the rail and the equipment given there.

Q. Now, on line 17 you adopted Mr. Gordon's proposed rail normalization adjustment of $221,638.00 rather than the

one approved by the Commission of $518,856.00, did you not? A. Yes, sir.

Q. And you applied that through eleven years? A. Yes.

Q. And will you accept my calculations, subject to correction, that it makes a difference of $3,269,398.00—using Mr. Gordon's figure rather than the Commission's figure? A. Yes, that sounds about right.

[276] Q. Looking back at another calculation here, where fairly sizeable figures are involved, how much difference would it have made if you had taken 83 for the common stock of the Atlantic Coast Line six, and 83 only, only 83 for the preferred stock. Can you figure that out quickly? A. Yes, sir. I figure that would be $1,950,000.00 difference.

Q. Now, do you have an idea as to the theory underlying these calculations in Lines 10 down to 21?

I put the question in another way: What has the amount of the expenditures which took place between January 1, 1941, and December 31, 1945 got to do with the differences between the Third Plan and the Fourth Plan, since all those expenditures were made before the valuation date in the Third Plan? A. Well, my view is that these, having been extraordinary expenditures, added to the value of the property. And these expenditures shown at Lines 11 and 12 of Exhibit D were prior to the period of Court liens. They were subsequent to the—they were also prior to the rehabilitation period, and they, having contributed to the value of the property, I felt that there should be shown the total net expenditures by the Trustees over the entire period from 1941 to 1951, as I explained in connection with Exhibit D-1.

Q. Now, I would like to start again, Mr. Bickley: This Exhibit D relates to the differences between the Third Plan and [277] the Fourth Plan, doesn't it? A. Well, the upper part shows the differences between the——

Q. All right. A. — Third and the Fourth Plans; yes, sir.

Q. The upper part shows the difference between the Third and Fourth Plan as calculated by you in Exhibit D? Correct? A. That is right.

BLEED THROUGH

Q. All right, now, the net figure in the upper part of $1,876,100.00—$1,876,100.00 is deducted, although not specifically listed, in reaching the figure in Line 21, isn't it? A. Oh, yes. I explained that Line 21 was a difference between Line 20 and Line 9, I am rather sure that I explained that in my testimony.

Q. So what you end up with is what you call the amount by which the net increase in cash value resulting from 1951 Plan fails to cover expenditures of bondholders' money for extraordinary improvements? A. That's right.

Q. And the question I want to ask you is this: Why should the net increase between the Third and Fourth Plans cover expenditures made prior to the Third Plan? A. Well, I understand that the Commission in its Fifth Report said that the additional consideration as is set forth in its report took care of any additional expenditures that had [278] been made. Now, the purpose of this was to go back——

Q. Now, you are speaking in a little vague terms.

Mr. Turney: If the Court please——

Mr. Bourne: I am entitled to interrupt him.

Mr. Turney: Let him finish.

The Court: Just a minute. Let the witness finish his answer, and then ask him another question.

The Witness: The exhibit shows three major categories of expenditures. The expenditures in excess of the reserves set up in the Fourth Plan, the expenditures for extraordinary improvements beginning in January 1, 1941, and going through 1945; the expenditures for improvements secured by Court liens. They are the three major items making up the $9,670,000.00.

By the Court:

Q. What were the first two items beside the Court liens? A. The Court liens were dealt with first, your Honor, in Exhibit A and then carried over to Exhibit D, which is item 19.

Q. I know, but you said this covered these three items. What were the first two in addition to the Court liens? A. Oh, the first was the amount expended by the estate in excess of the reserve established by the Commission in its Fourth Report, and that amount is shown in Exhibit B—yes, sir—yes, sir, Exhibit B. Now, the—there is no other exhibit detailing lines 11, 12, 13, 14 and 15 of Exhibit D, [279] but those lines deal with the expenditures between January 1, 1941, and the close of 1951.

Q. Yes. I am not so much interested in the exhibits at the moment as I am in what you say that the Commission says that this six million dollar increase was designed to cover: Court liens, which includes new equipment purchased, and certain improvements and betterments. Now, what else? Were there two other items which you were speaking of there? A. Well, I understood that the coverage was to be for all of these items. I may be wrong about that.

Q. Well, I am not differing with you about it, I am just asking you to repeat what you just said a moment ago, so I will be sure I understand it. A. I said that the statement measures the extent to which the consideration payable by Coast Line fails to cover the net expenditures for improvement. Now——

Q. No, I am afraid you don't understand what I am trying to determine here yet. The valuation under the Fourth Plan is six million dollars in excess of the valuation under the Third Plan. A. That was——

Q. What does that cover? What is that for? According to the Commission's reports as you read it? A. Well, it could be for increase in earning power.

Q. Well, I know, but it covered the Court-imposed liens, [280] didn't it? A. Well, it may have been intended to cover the Court liens, but I don't think it did. I don't think it did it. And that was one of the purposes of this series of exhibits. In one exhibit, C, we compared the principal amount of the obligations issuable under the two Plans.

BLEED THROUGH

Now, leaving out the Court Plans, there was an apparent increase in consideration of six million dollars. But when adjustment was made for the $5,261,000.00 of Court liens, then the net consideration by Coast Line was two million, seven, less, rather than having been increased by six million dollars. The Exhibit C develops that difference.

Q. Well, we are playing pretty far away. I meant to ask you one very brief question. Go ahead, Mr. Bourne. I didn't know we were going to stray that far away.

By Mr. Bourne:

Q. Do you care to point out any place in the Commission's report where you think there is any suggestion that the change in the Commission's Plan was intended to cover expenditures from January 1, 1941, to December 31, 1945? A. No. I couldn't refer to any section in the Fifth report.

Q. Now, I want to take this group of exhibits as a group: A, B, C, D, and D-1, and ask you some questions that relate to them as a group. Is it not true that none of them taken into account any earnings realized as a result of any of these [281] expenditures? A. These statements pertain entirely to investment and the depreciation accrued thereon. There is no reference to earnings.

Q. Is it not also true that depreciation has been taken into account only to the limited extent shown in these exhibits? A. Yes, because the depreciation applies only to the property covered by the exhibits.

Q. That is in the exhibits? A. Yes.

Q. Applies only to the property covered by the exhibits? A. Yes. You see, Mr. Bourne——

Q. I am just asking you whether these statements are not correct. Now, a third question is: Is it not true that the statements don't take into account any retirements at all? A. That's right.

Q. Now— A. Because they do take into consideration accrued depreciation.

Q. To the extent that the depreciation is accrued? A. That's right.

Q. Which is part, is that not correct? A. Well, it is part of what?

Q. Well, it is not—the total depreciation accruals of the railroad are not taken into account, are they? A. Only a portion. In other words the expense accruals [282] for depreciation from 1941 to 1951.

Q. Is it not true that the basic theory of these exhibits is that the Commission's reports approving the Third Plan should be so construed as to give to the 5% Bondholders all of the earnings plus part of the depreciation, and charge them with no retirement? A. I don't understand. Could you make it——

Q. No, I will leave that to the argument. If you don't understand it, I will reserve that. A. I want to make it clear, Mr. Bourne, that these statements deal with what you might call the balance sheet. You asked me a question about things that would be developed in the income account and I have covered both subjects. Here we are dealing with balance sheet considerations, and a discussion of income. I dealt with revenues, expenses, and so on, or the earnings that might develop from these expenditures——

Q. Well, as I said, I am going to reserve that to the argument and pass on to the next group of exhibits, E, F, G, H, and I. On Exhibit E you have made several calculations of averages?—didn't you? [283] A. Yes, sir.

Q. Did you make any calculation that didn't include any 1946? A. You are speaking of the averages typed in?

Q. Well, did you make— A. Oh, yes.

Q. —any calculations of any number of years that did not include the year 1946? A. Well, I believe I made averages on——

Q. I am talking about what is on the exhibit, Mr. Bickley. A. Well, my testimony contains more than what is typed on the Exhibit.

BLEED THROUGH

Q. All right, let's take them one by one. On the exhibit, you didn't make any calculation that didn't include '46? A. They all include '46.

Q. Now, did you give some others in your testimony? A. Yes.

Q. What was that? A. Well, I gave averages for '42 to '44, '42 to '45, '42 to '46, '47 to '50.

Q. What was the average of '47 to '50? A. $5,203,000.00. That's with respect to freight service.

Q. I am talking about all operations, excuse me. A. Oh, the only averages that are in my testimony on all operations are for the three periods for which the typed [284] figures are given.

Do you agree or do you not agree with Mr. Gordon that the record in 1946 is less significant than that in the succeeding years, because in '46, there was still war activity? A. I believe the entire period of '46 to '50 is significant.

Q. Do you believe that '46 is less significant than the suceeding years? Could you answer that yes, or no, please? A. I would not say it is less significant because if you referred to the statement showing traffic conditions, you will find that in the year 1951, the 1946 level of freight traffic was surpassed. So, I don't think you can wash out 1946 either, because it was the first year after the war, or because it was a comparatively high year in the post-war period.

If you washed out such a year, then there are apt to be eliminated, any year in which the earnings are comparatively low, in relation to the other years in a period.

That seems to me like making a selection to eliminate a high year just because it happened to be high. So I don't agree with that kind of reasoning.

Q. Did you say that with reference to exhibit E, that the first thing that you always did when you looked at railroad figures, was to look at the separation of freight service and passenger service, or something like that? A. No. I said that because of the difference in the [285]

characteristics, and because of the difference in operating results, I believe it's desirable—highly desirable, in fact, when possible, to separate the two services.

Now, when one relies upon published information such as found in Moody's, or even in annual reports, the separations cannot be made because generally they don't give the information essential for such a separation.

Q. And where is this separation obtainable? A. This separation is taken from the annual reports filed with the Interstate Commerce Commission except that for the years '46 to 1950, Mr. Gordon's adjustment had to be pro rated along the lines of the pro ration of the company in its report to the Commission.

The reports to the Commission, other than information in the possession of the company——

Q. None prescribe the method of apportionment? A. The Interstate Commerce Commission prescribes the methods of apportionment in its rules governing separation of expenses. I think the latest revised issue or the latest issue I had is some time in 1936.

Q. You don't believe, do you, that actually the amounts of those passenger deficits could be saved by terminating passenger operations, assuming that passenger operations could otherwise be terminated? A. No, unless by doing so it was possible to eliminate [286] one of the two tracks, and I am not in a position to discuss that.

Q. No. It's a pro forma division as between two types of service in the same Plan? A. Yes, it's a pro forma, based primarily on the use of the property.

Q. Look at your Exhibit F. Do you—I withdraw that and will pass on. What is the explanation of the 110% figure in Exhibit G? A. The 110 is the percentage increase in rates that would obtain if the 5% were granted over the 1950 level. In other words, it's the increase of the ten percent over the 1950 level.

Q. Let us turn now to your Exhibit I. A. Yes, s...

BLEED THROUGH

Q. Have you made quite a study of the application now pending before the Interstate Commerce Commission in connection with which you anticipate a 5% increase in freight rates? A. I wouldn't say that I have made quite a study of it. I am familiar with the fact that the Southern roads are asking for an additional 9% increase in their rates, and that they have already received 6%, but I have examined some of the exhibits, especially one filed by Dr. Parmelee, and also the testimony and exhibits, or part, at least, of the testimony, and exhibits of certain officers of the Coast Line, Seaboard and Southern.

Q. Have you made a study of the pending division cases, [287] Dockets 29799 and 29885? A. I have not made a study of them. I know about them in a general way. I know that the Examiner who heard those proceedings has issued a report recommending a revision—a reduction in the revenues that the Southern roads, including the Florida East Coast would receive. And, as I explained, I gave consideration to that and I assumed a five percent increase—additional increase rather than a nine percent.

Q. So your figure in Line 5 is a composite of the prospective increase in rates and a prospective reduction in the division receivable by the Florida East Coast, is that right? A. Yes, it's a composite of—it's a judgment figure after considering the possibility that the Southern carriers won't get the nine percent; that they may lose in the divisions and that the Florida East Coast may not get the benefit of the local Florida rates. And, at the same time, get any relief from the Interstate Commerce Commission. I don't know whether or not I pointed out, if they got the full nine percent, the revenue increase would be a million eight hundred and seventeen thousand dollars against the million dollars which I have used in one of the exhibits. And, it would go down at the rate of twenty thousand dollars a year for each one percent reduction in the rate increase.

Q. Well, from what you said, and your examination of Exhibit I, I take your judgment to be that the trustees who

[288] are operating this property should realize a balance available for fixed charges and income taxes, Federal income taxes of four million, one hundred and eighty-one thousand, in 1952. Is that right? A. $4,181,000.00 in 1952?

Q. Right? A. The Trustees have filed statements in connection with Ex Parte 175, and on one basis, even with less traffic, they restate the year 1951 at $4,200——

Q. Mr. Bickley, don't you know that is not responsive to my question? My question is whether or not Exhibit I indicates that in 1952 the Trustees ought to make $4,181,000.00 before—available for fixed charges and income taxes. That's merely a matter of examination of the exhibit. A. Yes, if they get the five percent increase that is——

Q. You are assuming that they will? A. Yes, sir, that is right.

Q. As a matter of fact, that understates the matter because you said the figure in Line 5 is a composite of the freight increase and an allowance for some loss of divisions or change in divisions may not take place in 1952? A. That is right.

Q. Now, will you look at Exhibit J, please. A. Exhibit J?

Q. Exhibit J.—and J-1. I would like to have you look [289] at them both at the same time. I suggest that in Exhibit J-1 the amount for the preferred dividends should be four hundred and fifty thousand dollars instead of three hundred and sixty? A. That's the preferred dividends on Coast Line preferred?

Q. That's right. A. Yes, that is right, because the common is paying five and the preferred——

Q. That would change the figure, one million seven hundred and fifty nine, to one million eight hundred and forty nine, would it not? A. By a dollar a share on ninety thousand shares.

[290] Q. Well, that's $90,000 and that, added to one million seven hundred and fifty nine makes one million eight hundred and forty nine, doesn't it? A. That is right.

BLEED THROUGH

Q. Huh? A. That is right.

Q. And so the amount of Debtor's earnings retained by the ACL would be reduced to seven hundred and forty seven thousand, wouldn't it? A. It would be reduced ninety thousand dollars to seven hundred and forty seven thousand dollars.

The Court: Let me get that. Now, what line on Exhibit J?

A. That is Exhibit J——

Mr. Bourne: J-1.

The Court: J-1. What figure, now?

A. The last figure, Your Honor, under the Commission's Fourth Plan. The total——

The Court: 837, you have now?

A. It would be reduced by $90,000.00, that being an additional dollar per share on 90,000 shares of preferred stock. And at the same time your figure just above that would be one million—the figure above it, in the amount of $1,759,000 would be increased by $90,000. And the other is $747,000. The last line.

[291] The Court: Now, that is in the event of what, now, that you make that calculation?

A. Well, the point is that the preferred stock starts with a rate of $4.00 a share.

The Court: Yes.

A. But, it's participating with the common stock in any dividends in excess of $4.00 a share. I have used here, a figure of $5.00 a share payable on the common. So, $5.00 a share should be the figure payable on the preferred.

The Court: Apply the $5.00, and you get these figures.

A. Yes, you would begin, Your Honor, with the preferred dividends. That would be raised from three hundred and sixty thousand to four hundred and fifty. Then, the $1,759——

The Court: Wait a minute. Three hundred and sixty would be raised to four hundred and fifty.

A. Yes, sir, to four hundred and fifty. The $1,759,000 would be——

The Court: Raised to $1,849,000.

A. Yes, sir. And the last figure——

The Court: Would be reduced to $747,000.

A. $747,000.

The Court: $747,000?

A. Yes. And that would reduce your dividends, also, Your Honor, in the $682,000 shown in the second column. That would become $592,000.

[292] The Court: I don't get that. What is the present figure?

A. Well, you see the figure of 682 in the second column down at the bottom.

The Court: Yes.

A. The difference in return to FEC bondholders.

The Court: That would reduce it to $632,000?

A. It would reduce it to $592,000. In other words, the $2,441,000 above that——

The Court: Would be $592,000.

BLEED THROUGH

A. —Would be $592,000 more than the $1,849,000, which would now be shown opposite to the $2,441,000.

The Court: All right. Mr. Bourne, is that a convenient stopping place for you, for the afternoon?

Mr. Bourne: It would be very convenient except the next thing I want to ask him is an arithmetical thing and I would like to put the question to him and let him answer in the morning.

The Court: All right.

By Mr. Bourne:

Q. Mr. Bickley, I would like to have you check these calculations and see whether they are correct or not.

Under the Fourth Plan, the Florida East Coast Bondholders would receive ninety thousand shares of participating convertible preferred stock and sixty thousand shares of [293] common stock. Upon the consummation of the Plan, they would have a 15.409 percent interest, measured with reference to the existing Coast Line common.

Make that calculation by taking your existing Coast Line common and adding the new common and the new participating preferred. A. Do you want to add the two to the present Coast Line common?

Q. Coast Line common. A. I suppose we should include, then, the small amount of Coast Line preferred?

Q. I don't think it makes any difference if you leave it out, and I don't think it really belongs in. A. Yes.

Q. The calculation that I—in order to compensate the Florida East Coast bondholders for the $747,000. which you said would be retained by the Coast Line, it would be necessary for the combined companies to have $4,847,816. Since the FEC is presumed to be contributing 747, it would be necessary for the present Atlantic Coast Line property to contribute $4,100,816.00. A. Well——

Q. Now, the purpose of that, and I would be glad to have you check it over night and bring out where it's wrong

[294] if it's wrong at all, is to make precisely the same kind of calculation or at least following the same theory which appears in the next to the last column on your Exhibit J. A. Yes, sir.

Q. Except treating the participating convertible preferred stock as being at least as good as common. A. Put them together.

The Court: Do you understand that now?

A. Yes, sir.

The Court: All right, I would like to give you a little home work to do. This morning you testified about the market value of the Atlantic Coast Line Stock for 1950 and '51. You said that in those years, each year it ranged from a high of so much to a low of so much, and that you then took a series of monthly averages over the entire period and calculated a fair average value for the entire period of two years. Do you remember that testimony?

A. I am afraid I don't, your Honor. What I did was to——

Q. I think you testified to that. A. Yes, it probably was. I gave, for a ten or eleven year period, and a longer period, the average of yearly highs and lows.

Q. Yes. Well, what I want to get, is what you say would be a fair market value of Atlantic Coast Line common over a period of the last three years, '49, '50 and '51. Do [295] you have access to authentic market dailies on that? A. Yes, sir.

Q. Give me, for each of those years, the high for the year, the low for the year, and then apply your method of a series of average monthly balances. Give me the center figure, so to speak, or a fair market price viewed over a period of the last past three years. Three calendar years. Do you understand what it is I want now? A. Yes, sir, I

BLEED THROUGH

can get it. Now I don't know—well I suppose I can find it in the city.

Q. Well, am I giving you a burdensome task? A. No, sir, nothing that you ask is burdensome. Certainly I wouldn't think. I can readily give you the averages of annual highs and lows, but I will try to refine it for you.

Q. All right, do the best you can. A. Yes, sir.

The Court: Now, Mr. Bourne, I would like to have your auditor, or whoever you select from your side of the controversy, to give me the same thing, and each one of you bring it in, in written form, so I can look at it. I want to know what you say would be a fair market value, average market value of the Atlantic Coast Line stock, viewed over a period of the last three calendar years, and as a means of arriving at that, give me, for each year, the high and the low, the [296] range for the high at so much to the low of so much over the years, and then applying whatever method you prefer, of a series of monthly averages, finally refining it down to a pin-point where you can say, this is what we think is the average market value of the Atlantic Coast Line common over a period of the last three years, don't you see?

Mr. Bourne: You want us to make out the—make our own decision as to how we do it, rather than to make a flat average——

The Court: I would like to have you follow, in a general way, the plan outlined, unless you have some fault to find with it. Because, I want you and Mr. Bickley to follow the same method as far as you can conscientiously do so, using it, as I say, not absolute, but as a guide.

The Witness: What I understand, your Honor, you want the facts as to this stock?

The Court: What each of you think is the average value of that stock, viewed over the last past

three years, and I want to have it in writing so I can look at it and study it along with all the other exhibits. We will just put them in evidence, both of them, whenever you get ready. Put them both in the record together so they can be considered together.

Now, take a recess until ten o'clock tomorrow morning.

(Witness excused.)

[297] —And thereupon Court adjourned to be reconvened at ten o'clock in the forenoon, Wednesday, February 6, 1952.

[298] . . . And, at 10:00 o'clock a. m., Wednesday, February 6, A. D. 1952, Court reconvened pursuant to recess of the preceding session, and the following further proceedings were had:

The Court: Well, call the witness back on.

Mr. John H. Bickley having been previously produced and first duly sworn as a witness herein, was recalled to the witness stand and thereupon further testified as follows:

Mr. Turney: If the Court please, the witness has prepared the statement requested by your Honor, and we are prepared to submit it now.

The Court: Well, we won't break in to the cross-examination. I will let Mr. Bourne finish his cross, and then we will take it up. Proceed.

Further cross examination by Mr. Bourne:

Q. Mr. Bickley, have you checked the figures which I gave you at the close of yesterdays session? A. Yes, sir.

Q. Did you find them to be correct? A. Yes, sir, I found that if the Coast Line, from its present operations, were to

BLEED THROUGH

match the retained earnings from the Florida East Coast properties, the contribution by the Coast Line would have to be the $4,100,000.00, as you stated.

[299] Q. Well, now, would you look, please, at exhibit J? A. (Examining paper) Yes, sir.

Q. What you have just been talking about would require a correction of the next to the last column, wouldn't it? A. That is so.

Q. Now, what we have been talking about is this, isn't it,—we have been talking about the results, assuming that the Florida East Coast would have a balance available for fixed charges and income taxes of four million six? A. That is so with respect to Exhibit J-1.

Q. Well, the calculations that you and I have just been talking about are based on Exhibit J-1 here; is that not also correct? A. We have been discussing two exhibits this morning,—J-1 and J.

J-1 is based upon income available for fixed charges and income taxes of four million six. Exhibit J presents various levels of income available.

Q. Well——

The Court: What was that figure that the Commission forecast income available for fixed charges and income taxes before?

A. $2,300,000.00.

The Court: Two million three hundred thousand dollars?

The Witness: Yes, sir.

[300] The Court: Go ahead.

By Mr. Bourne:

Q. Isn't the gist of what you have said, after checking the calculations, that on Exhibit J-1, using your forecast earnings of four million six, the amount of the Debtor's

earnings retained by the ACL, would be $747,000.00? A. That is right with respect to the four million six of available income.

Q. Now, turn, please, to Exhibit J. A. Yes, sir.

Q. What is the amount of the Atlantic Coast Line net income after dividends required for parity with the $747,000.00? A. That must be taken from J-1, and such amount is the $4,100,000.00.

Q. So, is it not the fact that the four million—is it four million, one hundred thousand dollars? A. $4,100,000.00.

Q. (Continuing) —$4,100,000.00 is the amount required for what you call parity, and I accept your basic concept with assumed earnings of $4,600,000.00 for the Florida East Coast? A. That is right.

Q. Now, isn't it the fact that double the amount required for parity was earned in 1950 and 1951? A. That is so.

Q. In other words, in 1950 and 1951, double the amount [301] required for parity, was earned for parity with a Florida East Coast contribution double the Commission's forecast? A. No, that is not—well, perhaps I don't understand you. We are still talking about the four million six estimated for the Florida East Coast and comparing that with the actual earnings of the Coast Line for the years 1950 and '51.

Q. Well, you said the amount required for parity with the four million six was four million dollars, didn't you? A. That is so.

Q. Or, $4,100,000.00? A. $4,100,000.00.

Q. And, the actual earnings of the Atlantic Coast Line for '50 and '51, after dividends, were $8,654,000.00 and $8,985,000 were they not? A. For those two years shown in the last column, the Coast Line's earnings, after dividends, were more than twice, but in the years immediately preceding, there is a different situation.

Q. Now, I want to give you an opportunity to correct, if you would like to do so, some of the statements that you made yesterday. The transcript shows, at page 164,

BLEED THROUGH

testifying with reference to the Atlantic Coast Line stock, you said:

"In 1950, when the Commission made its valuation, the low for that year was 41 and the high was 70½".

I would like to show you Document 938, Page 211 and Page [302] 218, and ask you whether the Commission didn't make its findings as of May 25, 1951? A. Yes, I know that that was the date of the findings, but the last year available, full year, was the year 1950, except possibly as to the market prices of stock.

Q. Would you state that again, please? A. The Commission made its findings in 1951, but the period covered in its review ended in 1950, except, possibly, as to market prices of stock.

Q. Is there not something in the report about Florida East Coast earnings in 1951, right in the report; also, about the Atlantic Coast Line earnings in 1951? A. Yes, there is some discussion as to estimated earnings for that year.

Q. Wasn't it stipulated that monthly both the Atlantic Coast Line and the Florida East Coast should send detailed income accounts and other statistical data to the Commission which were to be incorporated into the record? A. Yes, but the Commission made its findings in 1951, and, therefore, could not have known what the revenues, expenses or earnings for that year would be. That would have had to be an estimate, at best.

Q. Well, it could know, could it not, what the earnings were up to the date of the findings, couldn't it? A. Yes, allowing for some time lag between the completion of [303] the month's operations and the reporting thereon.

Q. Now, what did the Commission say—I withdraw that. When was the Fifth Report issued? A. The Fifth Report is dated July 12, 1951.

Q. And, what did the Commission say in its report as to the date as of which it made the findings of fair market value? A. I believe it was some time in 1951.

Q. Would you mind looking at the places on those sheets—pages 211 and 218? A. Yes, the Commission made the findings on market value of securities as of May 25, 1951, as it well could in relation to the average market prices, but not as to the earnings for the entire year 1951.

Q. Well, you don't suggest, do you, that it couldn't have had the earnings through the month of May, 1951? A. Well, it may have had.

Q. Certainly, it could have had them through the month of April? A. Yes, that would be four months, and the experience of the Florida East Coast was that there was—that there was a considerable upward surge in traffic in the last three months of the year, and that, of course, was not known to the Commission.

Q. Now, I want to ask you some questions about the ratio of earnings to market prices of railroad stocks, certain railroad stocks, and I would like to show you this——

[304] Mr. Bourne: Is there any objection, your Honor, if I stand with the witness and show him some of the Interstate Commerce Commission exhibits?

The Court: No, go ahead.

By Mr. Bourne:

Q. I want to show you Exhibit 444, which was before the Commission in the hearings in 1950. It shows, does it not, certain figures with respect to the following railroads:

Atchison Topeka and Santa Fe, Atlantic Coast Line, Erie, Great Northern, Illinois Central, Kansas City Southern, Louisville and Nashville, New York Central, Northern Pacific, Pennsylvania, Southern and Southern Pacific. Am I correct in reading those? A. Yes, sir.

Q. Now, would you say that that was a pretty representative group for an expert to use in forming an opinion about price-earnings ratios? A. Well, I am not so sure it would be.

BLEED THROUGH

Q. You are not? A. No. A larger group might be selected, and, perhaps, a more selective group in comparison with any one property——

Q. That has—that exhibit— A. — but, on the whole——

Q. It is not bad? A. It is a pretty good cross section. I won't say it is [305] the best. I wouldn't say it is wholly satisfactory for comparison with either the Florida East Coast or the Coast Line.

Q. Have you ever made a list of representative railroads for this purpose? A. Yes, sir.

Q. Have you got such a list? A. Well, one list I have used is that contained in the Moody's Railroad Averages of some twenty-five companies. Back in 1946, I did considerable research on railroads, and I had a group of about, between, twenty-five and thirty companies.

Q. Was that in connection with the Southern Pacific tax matter? A. Well, it was after the Southern Pacific tax case.

Q. Well, now, this is simply a question of reading this exhibit, preparatory to a further question:

This exhibit shows does it not, if the exhibit itself is correct, that in the years 1947, 1948 and 1949, the average prices of those railroads were—bore these relationships to the earnings: in 1947, 5.11 times earnings; 1948, 4.06 times earnings, and 1949, 4.86 times earnings? A. Those are the figures shown on the sheet, but the price earnings ratio of railroads is a widely fluctuating relationship.

Q. Well, I am asking you about this particular exhibit. I am going to ask you some more questions, and you will have a [306] chance to answer that. A. All right. The figures you read appear on that sheet.

Q. Now, would you take a look at your copy of Document 938, or the copy I lent you of Document 938—I withdraw that.

I would like to ask you to assume—you needn't express agreement or disagreement, but in preparation for a further question, I would like to ask you to assume that in the year, in August, 1950, Mr. W. Wendell Reuss, who was

called as an expert for the St. Joe Paper Company, was asked what the new stock of the Reorganized Florida East Coast, issued under the St. Joe Paper Company 1950 Plan, would sell at if the earnings were $2,500,000.00 a year, the word "earnings" meaning balance available for fixed charges and federal income taxes, and Mr. Reuss testified the earning power would be just nuder four dollars, and, with the glamour of the duPont management behind the stock, as we have in the Kansas City Southern case, with Doremus, and, in the Rock Island case, with Mr. Farrington, and in other cases where railroad stocks sell for five or six times the earnings, that stock would be worth twenty or twenty-five dollars a share.

Now, would you just read that, because I want to refer to that later.

In your study of the Commission's report, did you observe the findings, at Page 211 of Document 938, the last paragraph of that page,—and, as I read it, I am going to make one inter-[307]polation:

"As of the same time—" and I there interpolate the date is May 25, 1951, and I will go ahead—"we find that the First Mortgage Bonds issuable under the St. Joe Paper Company Plan would be worth par on an earnings basis, and, on a free market, the common stock would be worth twenty-five dollars a share, and the bonds and stocks together worth $26,250,000.00. Adding to this the equipment obligations, the total worth would be $31,564,000.00."

Q. Are you familiar with that paragraph? A. Yes, sir.

Q. Now, would you turn to Page 218, please. The second paragraph contains, does it not, the Commission's findings with respect to the market values of the bonds; that is, the income bonds, and the preferred and common stock which are to be issued under the Plan approved in that report; that is to say, the Fourth Plan. Is that not correct? A. Yes.

Q. And you, yourself, until yesterday, used those amounts as found by the Commission, in your exhibits, did

BLEED THROUGH

you not? A. Yes, I used that the Commission's findings for all the securities, and, I think I may say there, all the qualification I have in mind is the 3¼% bonds that were issuable under the Third Plan, but I think I have accurately equated those to the three and three-quarters.

[308] Then, at that time, in discussing the exhibit I was showing what the market value would be on the basis of the Commission's report. Then, I was asked my opinion as to the value,—what value I would place on the securities of the Coast Line issuable to the Debtor's estate, and I gave the figure of $35,000,000.00, which was some $600,000.00 more than the total shown on the exhibit when the securities were expressed in the Commission's valuation.

Q. Well, you said, didn't you, that the only price you changed was that of the common, which you increased from 64 to 70? A. That is right, and then made additional allowance, which was a judgment figure.

Q. Have you the record of the earnings of the Atlantic Coast Line, the earnings per share in 1950 and 1951? A. Well, 1951 has not yet been published to my knowledge. In 1950——

Q. Well, if you don't have them, I am going to— A. (Interposing) Well, I will tell you what they were in 1950. They were fifteen dollars and fifty or fifty-one cents, and when you use the first eleven months of 1951 and equate that to a twelve months period——

Q. Well, I asked you if you had them. If you haven't got them, I can go ahead. A. Well, I was just explaining——

[309] Q. There is no reason why you should have them, if you don't have them. A. Well, let me explain——

Q. It is not relevant what— A. Well, I was going to explain——

Q. I am going to put the figures to you, and ask you a question based on the actual figures.

I would like to have you assume, subject to correction, that these figures I am going to give you are correct, in 1950, the Atlantic Coast Line earnings per share of common

stock were $15.51, and, in 1951, they were $15.98, and that, yesterday, the Atlantic Coast Line common stock closed at 82¾.

I will have you further assume that the Seaboard earnings were $15.79 a share in 1950, and $17.93 in 1951, and closed yesterday at 72¼.

The Court: Who was that?
Mr. Bourne: The Seaboard.
The Court: The Seaboard?
Mr. Bourne: Yes.
The Court: All right.

By Mr. Bourne:

Q. (Continuing) I would like to have you assume further that the Southern earned $14.94 in 1950, and $12.21 in 1951, and closed yesterday at 51⅜.

Now, just as a matter of simple arithmetic, if the figures [310] I have given you are correct, the market prices, as of yesterday, are, in no instance, as much as six times the earnings, are they? A. No.

Q. Either year, or an average in the two years? A. That is right.

Q. Now, I would like to have you assume that there were an independent reorganization under the St. Joe Paper Company Plan, and that the new common stock were issued, and that there were willing buyers and willing sellers, and you may, if you please, assume that the balance available for fixed charges and income taxes would be $4,600,000.00 a year; that the capitalization would be, as shown in your Exhibit J-1, do you care to express an opinion as to what that stock would sell at under those circumstances? A. Now, when you say a willing buyer and a willing seller, you mean that there is a supply of the stock on the market, considering the prospects of the Florida East Coast, which would be known to the informed investor, the stock might well sell at par.

BLEED THROUGH

Q. I didn't ask you what it might well sell at, Mr. Bickley. A. I would express an opinion that, taking into consideration, not general conditions alone, but the conditions with respect to the Florida East Coast, the stock could well sell at par. Now, I don't mean to say that anyone can forecast, [311] for some unknown future date, what stock will sell for, and I would have to express an opinion on the basis of all the facts that might be known to the informed investor. It can be readily demonstrated that there is not much relationship between market prices of securities and earnings. Market prices can be high, and earnings relatively low. There can be a market price and a fairly substantial one for a stock that is paying no dividends. The experience of the Atlantic Coast Line demonstrates that fact.

Now, I would believe that the informed investor would give very careful consideration to the growth prospects of a property operating in the territory that has had phenomenal growth. I don't get away from the fact that the population of the State of Florida has been doubling about every twenty years since 1880, and, in my opinion, people buy and consume. They create business, and they create travel. Now, the informed investor is going to consider that.

Q. It seems to me that you had to talk quite a long time to explain why you thought it could sell at par? A. Yes, because——

Mr. Turney: Your Honor, I submit that is improper.

The Court: Yes, that is argumentative. Let us not argue about it. Proceed.

The Witness: And, as a matter of fact, Mr. Bourne, I could discuss that at even greater length to show why, I believe, [312] the informed investor would consider.

By Mr. Bourne:

Q. I would like to take up another subject for a moment, Mr. Bickley. A. All right.

Q. It has to do with the Dieselization. The record shows at Page 196, in answer to a question which, I think, was on direct examination, where you said:

"I believe that with funds available—and it appears to me there will be funds available—there will be brought about complete Dieselization."

What did you mean by there being funds available? A. In any construction or betterment program, the management must give consideration to its ability to finance. I believe the same problem has been presented to other roads, including the Atlantic Coast Line,——

Q. Was it your assumption that the——

Mr. Turney: If the Court please, I think the witness should be permitted to complete his answer, without being constantly interrupted.

The Court: Had you finished?

Mr. Bourne: I thought he had.

The Witness: That is all right.

The Court: All right, go ahead.

[313] By Mr. Bourne:

Q. Did you mean that the Dieselization would be financed in cash, wholly or partly? A. The manufacturer usually requires a down payment unless the use of the property is obtained under a lease arrangement. Someone else buys the equipment and turns it over to the operator on a lease basis. I believe that is the situation with respect to the five diesels that were received in December of last year.

Q. Will you look at Exhibit J-1, please? A. Yes, sir. (Examining paper).

Q. Doesn't that exhibit show that you contemplated that there would be $6,720,000.00 of equipment obligations issued in respect of the diesels? A. That is right.

BLEED THROUGH

Q. And, isn't that the entire cost shown in the electromotive report? A. That is so, and that was done in order not to disturb any other balance sheet item. Now, if the equipment were purchased on an equipment trust, a down payment would be required, and that is the reason I made reference to the availability of funds.

Now, as far as the Florida East Coast is concerned, with its present cash position, it could make a very substantial contribution or payment in cash on equipment obligations. But, [314] I did this so as not to understate the interest costs, or to overstate the earnings after taxes and fixed charges. It is a pro forma statement in that respect.

Q. What would be the effect, under the St. Joe Paper Company Plan, if cash were used in a substantial amount, to finance a part of the cost of the diesels? A. That would depend upon what happens between the consummation of the Plan and the time the equipment were purchased. Now, I think it has to be made clear at this point that I am assuming a normal operation based upon the experience of the Florida East Coast. Cash would become available through depreciation charges. I don't think, for this purpose, it would have been advisable to assume there wouldn't be a certain down payment, and that the interest costs would thereby have been reduced and the earnings increased, and that is the thing I wanted to avoid.

Q. Now, under the St. Joe Paper Company Plan, and the Plan proposed by the Commission in 1950, or the one that is called now the Bondholders Plan, on whom would the cash cost fall, if there were a substantial down payment in connection with the issuance of the equipment trust certificates? A. The cash payment would fall on the company, of course.

Q. It would come out of the estate, wouldn't it? A. Well, it would—we are assuming that the Florida East Coast has been reorganized under the Bondholders Plan. [315] Very well. There is then an operating corporation in existence and that corporation would do its financing.

Q. And, it would have $3,500,000.00 of working capital; isn't that right? A. With two million six of materials and supplies and one million of cash working capital, which would be about three million six.

Q. Isn't it $3,500,000.00 of working capital? A. Well, I was figuring the two million six for materials and supplies.

Q. I am sorry. We are talking about different subjects. A. All right.

Q. Two million six for materials and supplies. I put it to you that the St. Joe Paper Company Plan of 1950 and the present Bondholders Plan provides for $3,500,000.00, but doesn't provide for working capital—but doesn't provide for any reserve for station and terminal facilities; is that correct? A. Yes, that is all right, too.

Q. And, your thought is that $3,500,000.00 could be drawn on to the extent necessary to finance the equipment obligations; is that right? A. No, because if the three million five is there as cash working capital, then a part of that could be drawn on.

Q. A part of that could be drawn on? A. Yes.

[316] Q. All right. A. And, a means would be found, I am sure, under the management, to finance the remainder of any payment on equipment obligations. With three million five of cash working capital, there would be funds available for a substantial down payment on this amount of equipment obligations. But, just so I make clear what is being done, now, you can make assumptions as to drawing on internal sources that might be created at the time a Plan is consummated, but I am looking at the income results of a Dieselization program, and, I consider, of course, the ability to finance that program.

Q. You think a part of the $3,500,000.00 might be used to pay for part of the cost of the diesels? A. Yes, if this property were reorganized, with $3,500,000.00 of cash on hand, a part of that, I believe, could be available. I wouldn't like to say how much until I knew all of the exact conditions at the moment.

BLEED THROUGH

Q. Now, in addition, the electro-motive report contemplates the expenditure of approximately $1,394,000.00 for what are called facilities. What are they? A. They are—that contemplates a new engine house at Hialeah, I believe, and certain servicing facilities for the diesels elsewhere.

Q. Now, your Exhibit J-1 contemplates the issuance of bonds to the extent of one million dollars, the cost of these [317] facilities, does it not? A. Yes.

Q. Are you familiar with the provisions of the St. Joe Paper Company Plan?— A. Yes, I am.

Q. Wait a minute.—of 1950, with respect to financing the cost of capital expenditures? A. Yes, there is probably a limitation on the amount of expenditures that are fundable by bonds, but here, again, all that we are—at least it seems to me—all that we have to be concerned about is that the investment will earn a return. Now, you might suggest that the money on any down payment on equipment obligations might have implicit interest of more than two and three-quarters, or that the additional cash put into the property for real estate might have an interest rate higher than the 4%, but that, I don't think, is material here in viewing this as a financial operation. It is customary, in any proving in or justification of improvements to assume some interest on the entire investment. That's a standard practice.

Q. Well, I put it to you that in the 1940 Plan, St. Joe Paper Company Plan, the limitation was 75% and that the present Bondsholders Plan, the limitation is 66⅔ percent. A. Such percentages vary.

Q. Am I not correct in giving you those percentages? A. (Examining paper). Is it 75%?

[318] Q. (Indicating to witness on paper). A. 66⅔%, that is right.

Q. Under those particular provisions, there would have to be a percentage of a million three nine four provided for in cash, wouldn't there? A. Yes.

Q. And, that might be another cut into the three million five hundred thousand dollars, mightn't it? A. Mr. Bourne, you are discussing——

Q. Sir? A. You are discussing the ability of a company to finance and improve.

Now, a reorganization along the lines proposed by the bondholders, I don't believe that the Florida East Coast would have any difficulty in getting capital. Certainly, on debt money.

Q. Well, isn't it the purpose of those restricted provisions to limit the amount of debt and obligations that can be issued? A. The debt of a particular kind. Not any kind of debt. I known industries, today, that are going through tremendous construction programs, requiring very, very large sums of money.

Now, how a particular property does its financing, depends upon conditions at the time, and the status of the individual [319] property.

There may be bank borrowings for millions of dollars, or, short term notes. Those borrowings are regarded as temporary financing. At some time later, they take down bonds.

Now, here I am trying to show what the results from an income standpoint would be, if there were Dieselization, and incidentally the four million six hundred thousand dollars which we are talking about, doesn't take care—or, doesn't include all the prospects. But, this is a statement of the cost benefits and income benefits flowing from a certain program. And, I just believe that you have to figure interest on the entire investment, at least. I can say this. That the many studies of this kind that I have examined, and the studies I have made, interest is always included for the full amount. Now, you may disagree as to the rate of interest.

Q. Are you through? A. Yes, sir.

Q. I would like to turn to another subject. Page 216 of the record shows the question was put to you and you gave the following answer. This was on direct examination. A.

BLEED THROUGH

I beg your pardon, Mr. Bourne, are you referring to the transcript?

Q. 216 of the transcript. By Mr. Turney:

"Question: So that any reduction from the present level of taxation under the Commission's plan will enure solely to [320] the Coast Line—under the Bondholders Plan will enure solely to the Bondholders?

"Answer: That is correct".

Do you wish to correct that statement? A. No, I do not. Because I am viewing at that point, the Coast Line as a corporation.

Now, with the beneficial interest that the Bondholders of the Florida East Coast would have in the stock of the Coast Line, which is about 15% I believe, of the total——

Q. We agreed it was 15.409%, didn't we? A. About 15½%.

Q. Yes. A. The bondholders of the East Coast would have a beneficial interest in any kind of savings, whether through taxes or other items.

Q. They would have a beneficial interest to the extent of 15.409% in any savings and any increase in revenues and any increase in earnings of the whole enterprise, wouldn't they? A. Yes. But under the St. Joe Paper Company Plan, their beneficial interest would be 100% and they would control that 100%. They would not share that control with other people.

Q. Well, you don't mean to indicate, or you didn't mean to indicate yesterday, then, when you gave the testimony to which I have just referred, you didn't mean to indicate that the Folorida East Coast bondholders would not, as stock-[321]holders of the Coast Line benefit from tax reductions, did you? A. Oh, no. I think that's been made clear by the exhibits that were probably introduced after that.

Q. Now, at the very end of the morning session, Mr. Turney put this question and you gave this answer.

Mr. Turney: What page is that, Mr. Bourne?

Mr. Bourne: Page 219:

"Question: Mr. Bickley, you have—as a result of your investigation have you reached any conclusion as to the fair value of the property of the Debtor as of this date?

"Answer: In my opinion, it is fifty-eight millions dollars"

The question I now put to you is whether, when you gave the figure of fifty-eight million dollars in answer to Mr. Turney's question, you had in mind, the fifty-eight million dollars figure in the right-hand column on Exhibit J-1?

A. That is the same amount.

Q. Well, is that why you gave the figure? A. No. No, it's not the only reason.

Q. Well, now— A. May I continue, Mr. Bourne, if I may, please?

Q. Go right ahead. A. I gave you earnings ranges of some four million two to five million dollars. I said that I would use the arithmetical mean of four million six in my compilation, which is done in Exhibit J-1.

[322] Now, J-1 adequately supports a fifty-eight million dollar valuation.

But, valuations aren't made by formula. Valuations are made by consideration of a great many things. I have been looking at the results of the operations of this company for several months. I have approached earnings and values on many bases. I considered a lot of things. And, the amazing thing to me is, how fifty-eight million dollars always keeps popping up. It seems it doesn't make much difference how I look at it, I come to fifty-eight million dollars.

I also added, if you will recall, Mr. Bourne, that this fifty-eight million dollars is sort of an average of many considerations. I don't want to create the impression that my judgment factor is a static thing. It is not. Again,

BLEED THROUGH

this is a growth territory and I think fifty-eight million dollars, if anything, is quite a conservative valuation.

I go to this extent. That if some one owning this property asked me what he should be willing to sell for, I wouldn't be in a hurry to tell him to sell for fifty-eight million dollars.

Q. Cash? A. Cash.

Q. Now, if you will answer this question, please. I will try to put it in such a way that you can answer it specifically yes, or no. Did you assume a prospective earnings of four [323] million six hundred thousand dollars when you made the statement about the fifty-eight million dollars? A. No, sir. If you will look at the record further, you will find that I said I was considering earnings ranging from four million two, to five million dollars. And I just said that after averaging out for as many things as I could think of, and, I have had some of these valuations before, fifty-eight million dollars seemed to me to be a very reasonable figure for this purpose.

Q. Did you assume the savings from the Dieselization? A. Yes, but I considered no increase in the volume of business.

Q. Well, let's take, if you don't mind, the Dieselization. Did you assume the savings from the Dieselization? A. (Calculating) Yes, I say that that was wrapped up as a part of the basket.

Q. Well, I put it to you that the Dieselization, under Exhibit J-1, would involve equipment obligations of six million seven-twenty, and a bonded indebtedness of one million three ninety-four, making a total of eight million one hundred and thirteen thousand eight hundred dollars. And, I ask you whether or not that amount shouldn't be deducted from the fifty-eight million dollars— A. No.

Q. —in answering a question relative to the fair value [324] of the property of the Debtor as of this date. Do you want to answer that question? A. No, I don't think it should be deducted. Oh, you mean, before Dieselization?

Q. Well, if you are estimating the value of the property as of this date on the hypothesis that you are going to save a specified amount of money through Dieselization, don't you have to assume also, the cost of the Dieselization as an offset in the earning power to that extent? A. Yes, if you take the Dieselization savings out of the earnings, then you ought to take out of the investment, that which would be accompanied by the Dieselization program. Yes.

Q. Wasn't the fifty-eight million dollar figure simply the figure in the right-hand column of J-1? A. I have already answered that. It is not simply that figure. They happen to be alike. And, I have already said I have made any number of calculations for the past month or more and it's amazing how fifty-eight million dollars keeps coming back.

Q. I would like to return now to another subject, Mr. Bickley. I think you testified twice, yesterday, that in your formation of your judgment as to the value of this common stock under the St. Joe Company plan, you took into account the fact as you understood it, the St. Joe Paper Company had the option to take one-half bonds and one-half stock? [325] A. That's my understanding.

Q. Now, what is that understanding based on? A. Not on anything that is in the Bondholders Plan. But, representatives of the St. Joe Paper Company have made a commitment—I believe they made the commitment during the hearing before the Interstate Commerce Commission, that the St. Joe Paper Company would take, for their bonds, the stock of the Florida East Coast Railway Company.

Q. Well— A. And, having said it, I would be very willing to accept the word of the people of the St. Joe Paper Company.

Q. I think we got on a little different subject. You said at Page 245, after giving one of your reasons, or in fact mentioning one of your factors, you said:

"To supplement that, it may be added that St. Joe Paper Company would have the right to receive fifty percent of their interest in bonds."

BLEED THROUGH

That is the end of that particular quotation.

Then at Page 252 you said—I will read the whole question and answer there. This is on cross:

"Question: Well, isn't this true, Mr. Bickley? The essence of your testimony is that because St. Joe Paper Company says that it will take the stock, and that they won't sell it, hence it will never be less than par, isn't that the heart of what you say?

[326] "Answer: No, that is not the essence of it or the substance of it. The substance of it is that someone who had a choice to take either bonds or stock, accepted the stock in lieu of the bonds and placed a value on it.

"Now, that, to me, is the best evidence on market value, or, what that stock would sell for between a willing buyer and a willing seller, if it were sold.

"In other words, stating it briefly, St. Joe establishes the market."

Now, what is the basis for your statement that St. Joe had a choice and could have taken bonds? A. Having been in the same position as—being in the same position as other bondholders, they would have, I suppose, a right, a legal right, at least to share in a reorganization in the same manner as other bondholders of the same class.

But, in this case, St. Joe decided to take the stock.

There is nothing in the Plan, in the Bondholders Plan to that effect, but I believe that has been their sworn word, that they would take stock rather than bonds.

Q. Well, of course, the St. Joe Paper Company couldn't have taken the bonds as the other bondholders take bonds, could it? Because that would have made an issue of forty-five millions of dollars of bonds, wouldn't it? A. That is just the point. St. Joe Paper Company, by its willingness to take the stock—which to me in turn means that [327] they value the stock at par—makes it possible for the other bondholders to participate in a company with a well-balanced financial structure.

Q. You would agree with me, as an expert on valuations, to this extent, wouldn't you, Mr. Bickley? That if there was a fair inference that there was another reason why the St. Joe Paper Company takes stock, that might be taken into account in estimating the fair market value of the stock? A. Yes. And as a matter of fact there might be an inference that that would alter the value of the stock.

Q. What would that be? A. That the owner believes he can do a lot more with it than has been done heretofore.

Q. Have the St. Joe Paper Company people indicated to you that the present management is not efficient? A. Oh, no. Not at all. Not at all. We have exhibits in here to show the fine job the present management has done.

Q. Now, I ask you some questions about the earnings per share under the St. Joe Paper Company Plan, based on your forecast. And I think those were wrong to this extent. A. Is that Exhibit J?

Q. I am back to J-1 now. Those are wrong to this extent, that they don't take into account the interest on the new equipment obligations of the diesels, and the interest on the new bonds for the diesel facilities. Do you remember those figures [328] I gave you yesterday? A. Well, I don't recall.

Q. Well, we came out with $7.03 or $7.06 a share. How, here is a sheet which I made up from your Exhibit J-1, and in the right-hand column of J-1 you do show the amount of the total interest obligations, including those in connection with the new equipment and the fifty-six thousand dollars interest on the new diesel facility bonds. You also show the taxable income. Right on Exhibit J-1, $3,418,000.00, and you show the income taxes, $1,777,000.00, and that gives you a balance for the stock, according to my arithmetic, of $1,641,000.00. That is the first piece of arithmetic that isn't shown right in your exhibit, isn't it? A. Yes, sir.

Q. And is that correct? A. Now, let's see. Four million six—(calculating)—the figures here are correct.

BLEED THROUGH

Q. And the earnings per share, would be $6.56? A. Yes, sir.

Q. Now, you spoke yesterday of a possibility of a dividend, or the expectation of a dividend of six dollars producing a 6% return on one hundred par value, with earnings of seven dollars and a few cents a share.

What would you expect the dividend to be if the earnings were $6.56 a share? [329] A. The dividend might be the same, depending upon the financial requirements of the company at a certain time.

Q. All right. A. But, let me get this clear, and, I think it's exceedingly important.

I have not bound myself, as, of course, I never would, to a valuation based upon a formula. The purpose of J-1 is just to assume that four million six would be the earnings. What would be the results in income flowing down to the common stock? You have given the figures.

I hope I made it clear that the valuation of fifty-eight million dollars is not based solely upon such a formula as is given in the last column of J-1.

I think that statement, with respect to the use of a formula in valuation, has been recognized time after time. There just is no such a thing. You don't value by the application of an arithmetical formula. If that were true, why there would not be much room for judgment.

Q. Was there a difference between the Third Plan and the Fourth Plan with respect to the rate of conversion of the preferred stock into the common stock, in the event of redemption? A. I believe there was some difference in the conversion privilege. Or, as to—I don't recall the details of it.

Q. You didn't give effect to that, did you? [330] A. Well, I am sure I considered it. Because, I looked at these plans time after time.

Q. Well, you don't show it on any exhibit, do you? A. No.

Q. Now, the program with respect to the Dieselization, is contained in what is entitled "A preliminary study", is it not? A. Yes, sir.

Q. With the heading "Application of General Motors Diesel Motive Power on the Florida East Coast Railway", is that correct? A. That is correct.

Q. And it contains this statement, doesn't it, Mr. Bickley? Page 2:

"This report is a condensed and preliminary issue of a more detailed and comprehensive report which will be prepared and presented to the railway in the near future".

Is that right? A. That's what it says.

Q. In your exhibit you have assumed that the application of the Electro-Motive Division, will be acted upon favorably. What experience have you had with respect to, or which would qualify you, individually, to form a judgment as to such an application? Have you ever had anything to do with diesel operations? A. Not in the railroad field. Of course, I have read a great deal about it. I see the favor with which the Atlantic Coast Line has viewed complete Dieselization. I have had ex- [331] perience in conversion from streetcars to——

Q. That was in connection with what company? You mentioned the company, I think. A. The Louisville Railway Company. It is now the Louisville Transit Company. I set up that program for them back in 1940.

Q. Now, in your exhibit, you reached a judgment estimate, did you not, of the composite effect of the present rate increase applications and the outcome of the two division cases with the Northern railroads, is that right? A. Well, I mentioned the things I considered.

Q. Did you allocate any amount to the freight increases, and an amount to the divisions? A. No, sir.

Q. Now, would you consider yourself experienced in connection with rate applications and division cases of that type? A. I have not had experience in division cases. But it seems to me that we are now dealing in something else,

BLEED THROUGH

that is, a matter of business and economic judgment. You can go through a great many calculations and the results of your arithmetic may not be as good as experienced judgment. I have had to exercise judgment in matters of this kind for a long time.

Q. You testified to your experience with the Louisville Railway. That was a street railway? [332] A. Yes, sir. Well, it is no longer a street railway. It was, when I started.

Q. What is it now? A. It is a straight bus operation. Gas and diesel.

Q. And in addition you did some valuation work for the owner of the Chicago, South Shore and South Bend, is that the correct name? A. No. The Midland United Company was in bankruptcy and the trustee for Midland United engaged me to make a valuation of all the securities in the company's portfolio. The Chicago, South Shore and South Bend Railroad Company was included in that portfolio and I appraised it.

Q. You have never been employed by a railroad, have you? A. Yes.

Q. When? A. Well, I started many years ago when I was a student in college working for the Pennsylvania Railroad company.

I spent two summers in passenger and freight engine houses and one summer in the test department, which is a department functioning for the entire Pennsylvania system.

Then, I taught railroad administration——

Q. My question is, have you ever been employed by a railroad? A. My answer was yes.

Q. And when was the last year of your employment? [333] A. It must have been around 1915.

Q. Have you ever been employed by a railroad company to testify? A. No.

Q. Have you ever testified— A. Now, we are speaking of steam roads, are we?

Q. Yes. Let us understand that my questions will relate to Class I railroads— A. I understand.

Q. —as classified by the Interstate Commerce Commission. Have you ever testified before the Interstate Commerce Commission? A. No.

Q. Have you ever testified in any other railroad reorganization case? A. I don't believe I have. I would say not.

Q. I am not making a distinction between section 77 cases and equity cases. Have you ever testified in any railroad reorganization case involving a Class I railroad, whether it— A. No, sir.

Q. —was in 77 or in equity? A. I have not.

Mr. Bourne: That is all.

The Court: Before you go, Mr. Bickley. Mr. Bourne here is a matter I want to be sure I understand correctly. We have spoken at several places in the testimony of the net earnings [334] of the Atlantic Coast Line Railroad.

Mr. Bourne: Yes, sir.

The Court: In the year 1950 the net earnings are said to be $15.51 per share.

Mr. Bourne: In 1950, yes.

The Court: And, in '51, they are said to be $15.98 a share.

Mr. Bourne: Yes, sir.

The Court: Now, that of course does not mean that fifteen dollars per share is available for distribution to the common stockholders of the Atlantic Coast Line Railroad Company as a dividend? It does not mean that, does it?

Mr. Bourne: It's available, your Honor.

The Court: Well, I mean this fifteen dollars per share is earnings before Federal income taxes and fixed charges and other things?

BLEED THROUGH

Mr. Bourne: No, your Honor. No. It is after,

The Court: It is after? That is what I want to get straight in my mind.

Mr. Bourne: That is the earnings per share, and, if the Atlantic Coast Line Company paid out, which it legally could, one hundred percent of the earnings per share, it would pay out $15.98. It is the figure which corresponds—the corresponding figure that we are talking about; $15.98 for the Atlantic Coast Line Railroad Company and a five dollar dividend, and Mr. [335] Bickley talked about $6.56 for an independently reorganized Florida East Coast at a six dollar dividend. Those are exactly corresponding figures.

The Court: Well, it means that you say the Atlantic Coast Line Railroad Company has earned fifteen dollars—nearly sixteen dollars in 1951, per share, net, after payment of all operating charges, after payment of Federal income taxes, after payment of fixed charges on the funded debt?

Mr. Bourne: Precisely.

The Court: So that they could have distributed dividends at the rate of nearly sixteen percent per share in 1951?

Mr. Bourne: Certainly, if they had thought it was wise policy to pay out 100 percent of the earnings in dividends.

The Court: Well, they didn't do it. Do you happen to know offhand what dividend was paid?

Mr. Bourne: Five dollars.

[336] The Court: What happened to the other? Did you put that in as surplus?

Mr. Bourne: That stays in for capital improvements and——

The Court: Does it go into surplus?

Mr. Bourne: Yes, it automatically goes into earned surplus, and you go into earned surplus to pay dividends.

The Court: Well, you paid in dividends about one-third of the actual net earnings?

Mr. Bourne: Slightly less than one-third. We will have a witness who will give you the figure of the amount earned, available for federal income taxes and interest, which corresponds to the two million three, and the four million six that you have been hearing about.

Now, that figure for the Atlantic Coast Line Railroad Company in 1951 was $27,000,000, and the Atlantic Coast Line Railroad Company has only 823,000 shares. So, that was thirty odd dollars a share.

The Court: I see. All right. All right, I understand what your figures embrace. I wanted to be sure I had it in mind. You have finished your cross, have you?

Mr. Bourne: Yes, sir.

The Court: Would this be a good place to take up that report on market value?

Mr. Butler: Before he takes him on re-direct, your Honor, I should like to have an opportunity for a conference here.

[337] The Court: You may do it now.

Mr. Alderman: If your Honor please, may I ask the witness one or two questions?

The Court: Yes, you can come over and ask him while they confer.

Cross examination by Mr. Alderman:

Q. Mr. Bickley, I ask you to consider your Exhibits "K" to "N", both inclusive, I believe. A. Those are the ones dealing with the figures——

BLEED THROUGH

Q. In which you made certain comparisons between the Florida East Coast on the one hand and the Atlantic Coast Line, the Southern and Seaboard on the other hand. A. Yes, sir.

Q. I believe in each of those exhibits, in the next to the last column, you have a series of figures under the heading, "Southern". A. "Southern", yes, sir.

Q. By that, do you mean that those figures apply to or have reference to Southern Railway Company proper? A. Yes.

Q. Or, to what is commonly known as Southern Railway System, which includes some five other Class One railroads? A. These figures were taken from the annual report of [338] the Southern Railway, filed with the Interstate Commerce Commission.

Q. That is, the Southern Railway Company. A. Yes.

Q. The one company. A. The corporation, yes, sir.

Mr. Alderman: Thank you.

Mr. Walton: Your Honor, I desire to ask the witness a few questions.

The Court: All right, come over here so I can hear you better.

Cross examination by Mr. Walton:

Q. Mr. Bickley, by way of relating your Exhibit "D" to the Commission's findings, I wish you would refer to line 9 on Exhibit "D", the first column of figures, the $34,380,000. I believe that is the one that you raised, as your judgment figure to $35,000,000, is that right? A. That is right.

Q. If you referred to the Fifth Supplemental Report, which has been referred to here as Document No. 938, page 282, the second paragraph, do you not obtain the same figure of $34,380,000, by first referring to the Commission's figure there of $43,694,086.00, and subtracting from it the equipment obligations and the four million dollars which you

[339] treated as an off-set? A. Yes, sir. Is that where the Commission has applied its securities values to the principal amount and gave an aggregate for all?

Q. That is correct. A. It will come out the same.

Q. Now, in referring to either the Commission's figure of $34,380,000.00, or, your judgment figure of thirty-five million dollars, does your testimony mean to imply that the bondholders would receive all of that value? A. No. No.

Q. Is it true that there would be deductions from that value and the Bondholders would receive only a balance of it? A. That is so. In the first place, as shown by Exhibit "A"; there would be a deduction for the expenditures secured by Court liens to the extent that the Court recognized the liens.

Q. Would there not also be another deduction, specifically, would there not be deducted for the amount which the Commission found would go to the holders of the unsecured claims representing the valuation of the free assets? A. Yes. I wasn't considering those, there.

Q. You were not considering that? A. No.

Q. Are you able to translate the value which would go [340] to the bondholders, into the value which they would receive for present one thousand dollar five percent bonds? A. I have not done that, sir, but it could be done. I have not taken that step.

Q. You have not taken that step? A. No, sir. But I believe the basis for such a calculation would be found in these exhibits.

Q. Could you tell me what the process would be, based on your exhibits? A. No, I wouldn't know off-hand, and I would prefer to have more time to study it.

Q. Have you undertaken to determine the income which would be payable per one thousand dollar present five percent bond on the securities which would be exchanged for it under the Fourth Plan? A. The payments would be made up of the annual interest on the First Mortgage Bonds, in such amount of those bonds as would be issued after deduct-

BLEED THROUGH

ing the interest, the interest on the income bonds and the dividends on the common and preferred stock.

I believe a total of such interest is stated in one of the exhibits, but that exhibit assumed that the entire fourteen million dollars of first mortgage bonds would be issued, and as shown in Exhibit "A", there is a possibility that only around—or, less than nine million dollars would [341] be issued. I believe I have that interest detailed. Yes, sir. Exhibit "J", the footnote, 5, in referring to the earnings after taxes, is an amount of $1,860,000 or, $1,950,000 after correction, or five percent on the preferred, and that's made up of $626,350.00, of interest on the First Mortgage Bonds, certain amount of contingent interest and preferred and common dividends.

Now, at this stage, we did not make a link, because for this purpose I didn't think such link was necessary between Exhibit A and this exhibit.

Now, perhaps in Exhibit J-1 should have recognized the conditions set forth in Exhibit A, in which event the interest payable to the Florida East Coast refunding bondholders would not be the $626,000 but substantially less than that—if the five million of court liens were recognized by this Court.

Q. Mr. Bickley, is this is a fair statement? That under the Fourth Plan as now drafted, the holders of the present five percent. bonds cannot determine what base and stated amount of securities they will receive? Cannot determine what value of securities they will receive, and cannot determine what income they will receive on the securities? A. That is right.

Mr. Bourne: I object to that on the ground it is quite [342] within the field of argument by Mr. Walton, but a very improper question to ask this witness.

The Court: Well, it does approach that field, but I would like to see what is involved in it. Go ahead and answer it.

A. Under the circumstances it would not be possible for them to know what they would receive in par value or fair value, or whatever they would receive in interest or dividends.

I have already said that I didn't create a link between Exhibit A and Exhibit J. But certainly, if the Court liens are imposed and they are deducted from the First Mortgage bonds, the interest is not going to be six hundred and thirty-six thousand dollars.

By Mr. Walton:

Q. I believe you have previously testified that the Coast Line is now paying a 5% dividend on its common stock, is that correct? A. Well, it's a five dollar dividend——

Q. A five dollar dividend, yes, sir. I accept that correction, thank you. You have also mentioned the price at which the Coast Line common stock closed, either Monday or yesterday. Would you mind giving me that price again? A. I believe it closed at 83. It may have been 83 and a fraction. Well, it's in the neighborhood of 83. I am not sure exactly, but it's close enough for my purposes.

Q. Do you also know, and can you tell us the price at which [343] the Florida East Coast Railway 5% bonds closed Monday or yesterday? A. No, sir, I don't have those quotations that close.

Mr. Bourne: I won't object to you stating it in the record, if you want to.

A. I have Moody's Stock Record. The latest issue, I think, was in January, but I couldn't give you the up to date quotations on those securities. And, someone else has my record—my bond and quotation records.

Mr. Walton: May it please your Honor, counsel said he would not mind me stating that price into the record. I would like to state it as being 87, yesterday.

BLEED THROUGH

By Mr. Walton:

Q. Mr. Bickley, assume that one of my clients had sold, yesterday, a one thousand dollar five percent bond of the Florida East Coast Railroad. How many shares of the common stock of the Atlantic Coast Line could he have purchased with the proceeds of that sale? A. A little more than one. A little more than one share.

Q. Wouldn't it be a little more than ten, sir? A. Oh, I am speaking in terms of hundred dollar units. A little more than ten.

Q. A little more than ten, is that right? A. That's right.

Q. Now, would not my client, under those circumstances [344] then receive an income of fifty dollars a year on that more than ten shares of Coast Line stock assuming the present dividend rate? A. That's right.

Q. Would not that income of fifty dollars a year exceed any income which my client could receive on securities which he might exchange under the Fourth Plan for his same one thousand FEC bond? A. Well, he would receive a higher percentage return on the 5% bonds price at 87, than he would have on the stock of Coast Line, and assuming that the figures were the same.

Q. Let me put it another way. Would not the five percent, or five dollar dividend—fifty dollars total—on the ten shares of Coast Line stock represent more annual income than my client could receive on the securities which would be exchanged under the Fourth Plan for the same one thousand dollar bond? A. I didn't get the last part of it.

Q. All right, sir. We are taking the situation where my client on the one hand could have purchased more than ten shares of Coast Line common stock yesterday with money that he received from one Florida East Coast Bond. On that Coast Line stock he would have received fifty dollars annual income? A. Yes, sir.

Q. You are clear, that far? [345] A. Yes, sir.

Q. On the other hand, we are taking it that here is the Fourth Plan under which my client could exchange that

same one thousand dollar bond for certain Coast Line securities. Would not the Coast Line securities receive in the exchange produce to my client less annual income than the fifty dollars on the common stock? A. Well, for one refunding bond the holder would receive a certain amount of First Mortgage bonds carrying a rate of 3½%. A certain amount of income bonds with a rate of 4¼% and a certain amount of preferred common stock.

Now, I don't know how the total dollar return would match with the fifty dollars.

Q. Well, put it this way, sir. For whatever First Mortgage bonds he received, his return would be less than five percent, wouldn't it? A. That is so, and that is what I was trying to weigh.

Q. We can't determine what amount he will receive? A. No, because he don't know how many bonds he will get to start with.

Q. But whatever he does receive, the return will be less than five percent? A. You are probably right, but I would rather make a calculation, because, he received——

> The Court: But, he doesn't know how many bonds he will [346] receive. Some of them are income bonds?

A. Some of them are income bonds.

> The Court: So you don't know what the return will be on the income bonds. But, he knows how many bonds he will have though?

A. Yes. And, we could find how much stock would be received.

Now, the preferred stock—now, it begins to dawn on me. The maximum payment—cash payment on any of the four classes of securities issuable by the Coast Line is five dollars. Is that right?

BLEED THROUGH

Q. Yes. A. Now, it goes down to three and three-quarter percent.

Q. So that if my client had converted his bonds or my clients had converted their bonds into Coast Line common stock yesterday, their annual income at the present dividend rate would exceed the income that they could receive on securities offered under the Fourth Plan, is that correct? A. That's right.

Q. I have just one or two more questions I would like to ask you, sir. I wish you would refer to your exhibit C. And, am I correct in understanding that the purpose of that exhibit is to show what the bondholders would have received under the Third Plan and what they would receive under the Fourth Plan assuming the consummation of each at December 31, 1951? [347] A. That is correct.

Q. The first column of figures as I understand it shows what they would have received under the Third Plan? A. Yes, sir.

The Court: What is that exhibit number again?

A. C.

Mr. Walton: Exhibit C.

The Court: Go ahead.

By Mr. Walton:

Q. In connection with that first column of figures, Mr. Bickley, should there not have been added to that, some allowance for the lien and the lien holders which the court had provided prior to December 31, 1951? A. Well, it was a choice set as to where these equipment liens would be inserted on this statement. They might have been placed in the column covering the Third Plan. The final result would be the same either way. I put them in the second amount column because in this Fifth Supplemental Report the Commission said that such liens as were established

by the Court would in effect be taken off of the First Mortgage bonds. So, I decided to express it in that way.

Q. Yes, sir, I understand that basis, but there was no such statement as that in either the Third or Fourth Supplemental Reports, was there? A. No, sir, this is something new in the Fourth Plan.

[348] Q. Is it not true that the Fourth Supplemental Report left it up to the Court to determine about the liens that should be paid, and in what amount? A. Yes, sir.

Mr. Bourne: The Fourth Supplemental Report, you mean, dealing with the Third Plan, Mr. Walton?

Mr. Walton: Dealing with what we call the Third Plan. That is correct.

By Mr. Walton:

Q. Well, now, Mr. Bickley, I understand that you have made use of those liens at other points in other exhibits. I am trying to get it straight on this Exhibit C for purposes of my own thinking, here. If you had gone on further with the exhibits, and if you had not made other exhibits subsequent to this, would you not in your first column of figures have undertaken to show that there would be some amount payable to the Bondholders under those liens in addition to the amount which you now show in that column of figures? A. May I have that again, please?

. . . The question was read.

A. Well, if the Court had fixed any liens in connection with the Third Plan, they would—that amount would have been payable to the bondholders. Is that what you have in mind?

Q. Partially, yes, sir. You are familiar with the fact that the Court had ordered liens subsequent to the certification [349] of the Third Plan, and some of those liens were discussed in the Fourth Supplemental Report dealing with the Third Plan? A. Yes, sir, that was—I believe at that

BLEED THROUGH

time the figure was about four million six hundred thousand dollars.

Q. Let's see if we can reach it this way. Assume that there had never been any Fourth Plan and that you were making an accounting approach to determine what the Bondholders would receive at December 31, 1951 under the Third Plan. On those assumptions, would you not have included in your First column of figures, some amount of money payable to the Bondholders under the lien? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Would you, indulging the same assumptions which were indulged in your second column of figures, referring to the Fourth Plan—would you have inserted in the column dealing with the Third Plan, the figure of $5,261,436.00? A. Yes, sir.

Q. Now, if that process had been followed, your exhibit would have shown that the bondholders would receive some eight million dollars more under the Third Plan than under the Fourth Plan, would it not? A. That is right.

Mr. Walton: Is that correct, sir? Thank you.

[350] Mr. Bourne: May I ask a question about that at this stage?

The Court: Yes.

Cross examination by Mr. Bourne:

Q. Mr. Bickley, hasn't Mr. Walton confused that a little bit? Isn't this correct, that when you made your comparison it didn't make any difference whether you included $5,261,436.00 in the first column or whether you deducted $5,261,436.00 in the second column? A. The way it's set up there, it's two million seven less under the Fourth Plan than under the Third.

Q. Well, what you did—isn't this the theory of your Exhibit C? That you didn't treat the five million two hundred sixty-one thousand four hundred and thirty-six

dollars as payable under either plan per the plan itself. You have treated it on the theory that under the Third Plan it would be an additional payment and under the Fourth Plan it would be a deduction? A. That is right.

Q. Now, I will return to my original question. For the purposes of your comparison, you get the same result, whether you include the five million two hundred sixty-one thousand four hundred and thirty-six dollars as an item to be added to the total shown in line 13 or whether you included it—take it [351] in as a deduction in the second column, eventually being reflected in line 13. Isn't that correct? A. Yes.

Q. When you are comparing the two, it doesn't make any difference whether you add or deduct? A. Yes.

Q. Hasn't Mr. Walton made a calculation that you assumed you made an addition in one column and deducted it in column two? A. I am sorry it is correct.

Q. So, what he has done has counted them twice, hasn't he? A. That is right. Thanks for calling my attention to that. I believe I said in my direct testimony it wouldn't make any difference how he did it. You would come out with the same answer.

Mr. Bourne: That is all.

Mr. Turney: Any further cross?

. . . To which inquiry there was no response.

Mr. Turney: If your Honor please, I would like to come now to the request of the Court for a compilation of the monthly payment—monthly range of market prices of Coast Line stock.

By Mr. Turney:

Q. Mr. Bickley, during the recess have you complied with the request of the Court with respect to providing those [352] figures? A. Yes, sir.

Q. Is the result shown——

BLEED THROUGH

Mr. Bourne: Could I have a set, please?

Mr. Turney: Yes, sir.

By Mr. Turney:

Q. Is the result shown on a statement entitled "Monthly range in market prices of Coast Line Stock" which I have marked for identification V, I think. Is that right, Mr. Clerk?

The Clerk: Yes.

Mr. Turney: Now, Mr. Bickley, will you tell me just how you have set this exhibit up?

A. The exhibit shows for each month for each of the years 1949, 1950 and 1951, the high price for the month, the low and the monthly average.

I am speaking now of the upper one half of the exhibit. It shows also the average high, the average low, and the average of the monthly averages for each of the years.

There are shown further, for the three year period, the average high, the average low, and the average of the two figures.

Q. Now, for the year 1949, what was the average monthly average? A. $37.95.

Q. And the similar figure for 1950 and 1951? [353] A. In 1950, the annual average of the monthly averages was $50.84.

And in 1951, the similar amount was $71.72.

Q. Now, what was the over all three year average, taking the average of the highest, the average of the lowest and the average— A. $53.50.

Q. Would that same figure be obtained if you add the 72 highs and lows and divide by three? A. Yes, either way.

Q. Now, at the bottom part of the page, had have you shown? A. Here are shown the range—the annual ranges of high and low for each of the years 1937 to 1951 covering the fifteen year period.

Q. And during that fifteen year period, what was the absolute high? A. The high was, in 1951, when the quotation was 83¼, and that was probably toward the end of the year.

Q. And what was the absolute low during that fifteen year period? A. 9 and five-eighths in 1940.

Q. And what was the lowest average during the fifteen year period? A. The lowest average was in 1940 when it was 16 and 9/16.

[354] Q. And the highest average? A. Was in 1945 in the amount of 65 and 11/16.

Q. How about 1951, sir? A. I am sorry. In '51 it was the highest of the annual monthly averages. Then, it was 71 and ⅞.

Mr. Bourne: Could I ask a question, Mr. Turney?

Mr. Turney: Help yourself.

Mr. Bourne: That is some difference between the averages at the bottom of the page and the averages above. Would you bring out how the averages on the bottom of the pages are made up, or has he testified already?

Mr. Turney: He testified the year high and year low and the other is monthly high and low by month.

Mr. Bourne: Just plain mean for the high and low for the whole year?

Mr. Turney: That is correct.

A. Yes, sir. Taking the year 1949 for example the average was 39¾. Now, when an average is taken of monthly highs and lows, the corresponding figure was $37.95, and that's due to the movements throughout the year.

By Mr. Turney:

Q. Did you have time to make a monthly average for all of these years of the highs and lows? A. No, sir, I didn't have time to do that. That's what I hoped to do.

[355] Mr. Turney: We would offer, if the Court please, this Exhibit V, for identification.

BLEED THROUGH

The Court: V as in very?
Mr. Turney: Yes, sir.
The Court: Let it be filed.

The instrument last above referred to was received and filed in evidence and marked Exhibit V.

By Mr. Turney:

Q. Mr. Bickley, on cross examination you were asked—

The Court: Just a minute. Are we going to take up the cross examination of other counsel here now? Are you going to re-direct him?

Mr. Turney: I am on re-direct.

The Court: Wait a minute while we are on the question of market value, Mr. Bourne do you have your table that corresponds with it?

Mr. Bourne: We have not one typed up, but I understand it is in work sheets and if there is some material difference, why we will call it to the Court's attention. We can submit some additional calculations.

The Court: My notion was to put them in the same place so when you look for this you will find both sides right there. We will go ahead and take it up later.

[356] By Mr. Turney:

Q. Mr. Bickley, you were asked a number of questions regarding the price earnings ratio. What is your opinion of the significance of that ratio in appraising an entire stock issue or property, on any given date? A. In my judgment, it has an extremely limited, if any, significance at all.

Q. Now, have you prepared an exhibit which exemplifies some of the considerations upon which that judgment is based? A. Yes, sir.

Q. All right. A. May I have another copy of it, Mr. Turney.

Mr. Turney: Yes. I ask that the document, a single page, entitled "Earnings ratio and dividend yield", be marked for Identification as Exhibit—what is after V—W?

The Witness: We are running out.

The Court: You want to mark it W?

Mr. Turney: Yes.

The Court: All right.

. . . The instrument last above referred to was received and filed and marked St. Joe Paper Company Exhibit W for Identification.

By Mr. Turney:

Q. Now, will you take this exhibit, please, Mr. Bickley, and explain what it is? A. Exhibit W is in two parts. The amount column—two [357] amount columns to the left, show what is called the price earnings ratio. That is the average market price divided by the earnings per share. This ratio is shown as an average for the twenty-five railroad companies included in the Moody's Investors' Service series.

The last two columns are, with respect to the Moody Group and the Atlantic Coast Line, what is called the dividend yield on common stock. The dividend yield is the annual dividend divided by the average market price per share.

Q. Now, taking, first, the earnings ratio, is it true that if a property, or if the twenty-five railroads were being valued in 1939, the value would have been twenty-three times earnings, and if they were valued in 1942 on the price earnings ratio, they would have been valued at twice the earnings? A. Yes, sir, and, moreover, there couldn't have been any such basis for valuation in the year 1938, because, then, there was a deficit, but the stock still had a market value.

BLEED THROUGH

The same thing is true in 1935. It would not have been possible to apply that price earnings ratio.

Q. Now, give the range, so that it will be in the record, of the price earnings ratio between 1936 and 1950 of the twenty-five railroads? A. Well, the range was from minus to a maximum of 45.68 times earnings in 1937, and considering only the [358] years in which there were earnings, the low was 1.91 times earnings in 1942, and the high was, again, the 45.68 in 1937. And, I think it is particularly significant when there were earnings, there was a high ratio. The next year you couldn't have determined a price earnings ratio, or it would have been a negative figure if it were measured.

Q. Now, looking at the similar ratio of the Atlantic Coast Line, what do you find? Do you find the same variation? A. Yes, the same kind of general situation. In 1935 and 1938, when the property operated at a deficit, there would have been a negative price earnings ratio, whatever that would mean. It doesn't mean anything to me, but omitting the loss years, the low was about one times earnings in 1942. That is, the average market price was just equal to the earnings per share in 1942, and, in 1939, the average price was 23.26 times the earnings, and that followed the year in which there was a deficit and a price earnings ratio could not have been calculated.

Q. Now, will you turn to the last two columns and explain the significance of that computation? A. Here are shown the dividends as percentage of average market price. It is a more stable statistical series than the price earnings ratio, but a considerable variation is shown nonetheless. I am speaking now of the Moody's twenty-five railroads average. It varied—the yield varied from [359] 2.74 per cent in 1936 to a high of 8.47 in 1949; again speaking of the twenty-five companies.

Q. Now, when we look at the Coast Line, we find no yields in 1935, 1938, 1939 and 1940—that is four years out of the sixteen—and that is because the Coast Line did not pay dividends in those years. Nevertheless, the stock had a

market value; even though no dividends were paid, there was some value attaching to the stock.

Now, in your opinion, as an analyst, is either one of these ratios a safe or a fair or a just basis on which to value a man's property which is to be taken? A. I would say that there are figures to be looked at and considered, but I would give very little weight to them, as compared with the things that are more directly related to the property being appraised.

Q. Now, Mr. Bickley, do you recall what the capitalization value of the Debtor is; the rate-making value? By that, I mean the value of its assets, its carrier assets, less depreciation? A. For rate-making purposes?

Q. Yes. A. I don't believe the Interstate Commerce Commission has placed a rate-making value on the Debtor's property. It did issue, recently, its elements of valuation, showing the reproduction cost new of road and equipment, reproduction [360] cost less depreciation, the original cost new, and certain valuations for land, and allowances for cash working capital and materials and supplies.

Q. Did you come to any opinion as to what that rate-making value would be? A. Just let me—I believe it is in the neighborhood of seventy-seven million dollars.

Q. Now, do you regard a fair cash market value as the equivalent, either of rate-making value or of capitalization? A. Of capitalization structure; you mean the total?

Q. Yes, sir. A. No, sir. No, the market value is not the same as rate-making value, or the capital obligations outstanding.

Q. Now, will you turn to your Exhibit J-1? A. Yes, sir.

Q. Under the second column called the "Bondholders' Plan"? A. Yes, sir.

Q. Is the fifty-eight million dollars the valuation of the property, or is it the sum of the capital stock and obligations which would be issued under the Plan? A. That is correct.

BLEED THROUGH

Q. Now, does it have any necessary relation or connection with your valuation of fifty-eight million dollars on the property? [361] A. I explained this morning Mr. Turney, that the two figures happen to be the same.

Q. Now, one other question: If I understood it correctly, in arriving at this synthetic value of $6.58, I believe that Mr. Bourne eliminated the additional equipment obligations, and thereby reduced the amount of interest, increased the amount of Federal income tax, and reduced the amount of net earnings available to F. E. C. bondholders, did he not? A. Now, that is not my recollection. The statement Mr. Bourne showed me gave the income available of four million six; interest on long-term debt of $1,182,000, income taxes of $1,777,000—Do you have that statement there, Mr. Bourne?

Mr. Bourne: Yes, I have it here.

. . . Handing paper to Mr. Turney.

Mr. Turney: That is correct, and I apologize. I didn't have the statement. I misunderstood you.

By Mr. Turney:

Q. Yesterday, in response to one of my questions, you stated that there were three characters or classes of expenditures. Turn to Exhibit D, please. A. Yes, sir.

Q. Which were included on the lower half of that page. The Court, according to the record, asked you a few—asked [362] you about a few matters, and asked you to repeat that statement, and you never succeeded in repeating it? A. I got lost.

Q. Do you remember the page where that occurred, Mr. Bickley? A. It is almost at the close of the session.

Mr. Turney: Well, without stopping——.

Mr. Butler: Page 278.

Mr. Turney: Page 278.

Mr. Butler: Yes.

Mr. Turney: I don't see it, but I remember it quite well.

By Mr. Turney:

Q. The Court asked you to state what three classes of expenditures are included in arriving at the total of $9,670,000 shown on Line 20, and the net amount of $7,794,000 shown on Line 21. Now, will you answer that question directly, please? A. Yes, sir. The three classes of expenditures, in the order in which they appear on Exhibit D, are as follows:

Expenditures against the rehabilitation reserve in excess of the amount reserved in the Commission's Third Plan, which is item, Line 10.

The next amount was the expenditures and improvements not covered by liens or the rehabilitation program, shown in Line 18 of Exhibit D, in the amount of $4,408,946, and the third [363] was the expenditures for improvements secured by court liens shown at Line 19 of Exhibit D.

By Mr. Turney:

Q. Now, you were asked about the inclusion of the expenditures for extraordinary improvements——.

The Court: Excuse me just a minute. That figure of $5,261,436 is the aggregate of the actual cash expenditures, is it. It doesn't include unmatured purchase obligations, does it. That is actual cash out of pocket, is it?

The Witness: Yes, sir, except for this, that I have deducted depreciation. The actual cash expenditures was $6,250,000. That is shown——

Mr. Turney: In Exhibit A.

The Witness: (Continuing)—in Exhibit A, the last line.

BLEED THROUGH

The Court: That figure there takes into account, depreciation?

The Witness: Yes, sir.

The Court: On the equipment?

The Witness: Yes, sir, and it recognizes that there are still $3,300,000 to be paid on the equipment.

The Court: On unmatured purchase obligations?

The Witness: Yes, sir.

The Court: All right.

By Mr. Turney:

Q. I believe you explained yesterday that figure will grow as time goes on for installments paid by the Trustees? A. Yes, sir, the five million two, would rise to about [364] eight million six, less any additional depreciation accruals.

Q. Now, you were asked about the inclusion of extraordinary expenditures for land and equipment made between 1941 and 1945, the net of such expenditures, less depreciation, being shown at Line 15, of $4,427,387? A. Yes, sir.

Q. Now, in Line 17, you deducted the normalized rail charge of $221,638 for each of those five years, did you not? A. Yes, sir.

Q. So that if it should be held that that figure is improperly included here, then the amount which is to be reduced from the figure of $9,670,000 is $4,427,000 minus five times the rail normalization rate? A. That is correct.

Q. And you calculated what that would be? A. The net would be about $3,300,000; that is, if the expenditures for extraordinary improvements prior to 1946 were eliminated and an adjustment were made also for the normal rail charges, the $7,794,000 shown at Line 21 of Exhibit D would be about $4,500,000.

Q. Well, you use the figure of $4,472,000? A. Yes, sir.

Q. Knowing how fallible my arithmetic is. A. I haven't found it to be too fallible.

Q. Thank you. And, that would be the full effect, [365] giving full effect to the elimination of that prior period

if the Court, for any reason, should hold it should be eliminated? A. That is so.

Mr. Turney: That is all of the re-direct.

The Court: Have you about finished this witness?

Mr. Turney: That finishes the re-direct, your Honor.

The Court: All right.

Mr. Turney: I would like to offer Exhibit W in evidence, your Honor.

The Court: All right.

. . . The instrument last above referred to was received and filed in evidence and marked St. Joe Paper Company Exhibit W.

The Court: Any recross?

Mr. Bourne: I would like a little re-cross.

The Court: Go ahead.

Re-cross examination by Mr. Bourne:

Q. Mr. Bickley, in answer to one of Mr. Turney's questions, did you say that you thought that a price earnings ratio was of extremely limited significance? A. Yes, sir.

Q. If any significance at all? A. Yes, I said that. Now, that is for the purpose of valuing a property.

Q. Well, now, let us see for a minute. A. For the purpose of sale.

[366] Q. When you come to valuing a property, we don't have the ratio to start with, do we? A. Well, you have earnings and the X is the value, and that is the unknown at this time.

Q. The X is the value? A. Yes.

Q. And, the price earnings ratio isn't established until you establish the value, is it? A. That is right.

Q. Well, you didn't mean to imply, in answer to Mr. Turney's question, that earnings weren't or aren't very significant, did you? A. Oh, indeed not. Earnings are very important.

BLEED THROUGH

Q. Earnings are very important? A. Yes, sir.

Q. They are very important in determining what the value is, aren't they? A. Yes, sir.

Q. And, when you determine a valuation based on the earnings, you automatically establish a valuation earnings ratio, don't you? A. Yes, sir. You then have your value number times of earnings account for the purpose of the valuation.

Q. You just tell me what you mean by saying that is of no significance if it is the result of the very process that [367] we are trying to establish here? A. Well, we were discussing a specific subject, namely, the number of times average market price of certain stocks has been to earnings from year to year. That is, the price earnings ratio on railroad stocks. The figures are given, and I believe the figures shown here are a very conclusive demonstration of the fact that you can't use such price earnings ratios on common stocks for the purpose of placing a value on the property of a certain company for the purpose of sale or merger. That is what I was talking about.

Q. How about for the purpose of selling the stock? A. For the purpose of stock, it still has a limited value. The dividend yield, I think, in that respect is more important, although we may have no dividend yield, such as the Coast Line had or was experiencing in four of these years; yet, the Coast Line stock had a value.

Q. Well, you have pointed out, haven't you, that our problem here is, first, to determine either how the Commission determines, or to make a new determination, if that is within the province of those of us here, of the earning power, and then establish the valuation; is that correct? A. That is so. We move from a consideration of earnings to a measurement of value.

Q. And to know how high to get to the value, we have to have, or must have some yardstick, if it is a good yardstick; isn't [368] that correct? You will agree with me that if a yardstick can be devised which is helpful in show-

ing what the valuation should be in relation to earnings, it is well to use that yardstick, isn't it? A. Well, the only difference between you and me, Mr. Bourne, in that respect is, I don't believe there is such a yardstick. I have never seen one. I have never found one.

Q. Have you never seen any situation in which evidence of the relationship of earnings to price, in connection with securities of other companies at the same time, was extremely helpful in determining what would be the market value? A. Oh, yes, it can be helpful, but not conclusive.

Q. Well, I am more interested in finding out——

Now, isn't it true, Mr. Bickley that if we talk about a price earnings ratio as established in the past, and if we treat that as something which is to be used as a rigid yardstick under all circumstances, then it can be shown we are wrong because it can't be used as a rigid yardstick under all circumstances, can it? Isn't that what your exhibit shows? A. A yardstick is rigid in itself, but a yardstick——

Q. Used as a rigid measure then? A. Yes.

Q. You and I are in agreement that if anybody announced the proposition that under all circumstances, and at all times there ought to be, the value ought to be determined with respect to—by applying a specific formula of price earnings [369] ratio, we would both be wrong, wouldn't we? A. Such a ratio could be, yes.

Q. Would you agree also that the nature of statistical experience, the nature of mathematics is such that when you get to an extraordinary period like a depression in which the earnings are very, very small, or disappear entirely, yardsticks or guides that are good in more normal times, would be ridiculous? Right? A. Oh, yes, but they can be ridiculous even in what appears to be a period of prosperity. Let us go back to 1929. Price earnings ratios were very high, but the properties weren't what the ratios indicated.

Q. But, Mr. Bickley, we can agree on this, can't we, that these guides or yardsticks, which are used, in more or

BLEED THROUGH

less normal times, based on experience and knowledge of comparable companies can be made absurd if the things, which are in reality, not alike, are used, or if the periods are totally different. We agree on that, don't we? A. Well, no, I don't agree with what I would infer from those statements.

The Court: Wait a minute. I think we are getting off into too much theorizing and debate here. It is interesting, but we are getting away from the facts now.

Mr. Bourne: I will ask one more question, if the Court please. This is not theorizing, but is hypothetical.

The Court: All right, I will give you one more question in this process here, and see what you do with it. All right. [370] Go ahead:

By Mr. Bourne:

Q. I would like to ask you to assume, Mr. Bickley, that if, of a given time, the earnings available for interest and fixed charges of an independently reorganized Florida East Coast are $4,600,000 a year, if you had the St. Joe Paper Company capital structure, the structure under their Plan, of $6.56 a share, and at that same time you had the present earnings on the Atlantic Coast Line stock, per share, of $15.98 a share, and that a client of yours had $3,500.00, and he could buy fifty shares of Atlantic Coast Line common at the price you named, seventy dollars a share, and get the benefit of $799.00 of earnings appertaining to those fifty shares, and he could buy thirty-five shares of New Florida East Coast common and get the benefit, according to your estimate of $229.60, which would you tell him to buy? A. I must admit you have lost me. May I refer to this question from the transcript, and consider it.

Mr. Bourne: I promise not to ask any more questions, your Honor, if he wants to read that while going out to lunch.

The Court: I think, myself, that is a rather burdensome call you have made on him just to answer that offhand. You can look it over. We will defer your answer to that until later. Is this going to conclude your cross. Is that the last thing you want to ask him?

[371] Mr. Bourne: Yes, sir.

The Court: You can get the reporter to read that to you.

The Witness: All right, sir.

The Court: And consider during the lunch hour, and see if, later, you can answer it, and if you are not, say so. It is a very involved question.

The Witness: I didn't want to take the part of a Quiz Kid on that one.

The Court: Now, what is the situation with respect to your evidence? What other witnesses are there for the objectors here?

Mr. Turney: If the Court please, I have one more witness, if there is no objection to the competency of the witness. If there is, I will have to bring nine more here. Now, that is the status. If we use the one witness, the direct should not take over twenty minutes. If we use the nine, probably two hours, and we can't get them here until tomorrow morning. Now, that is the situation, because the evidence, through this witness, is not competent under the rules of evidence, but I am offering this merely to save the Court's time.

The Court: Well, we are half through the third day, and we still have not finished with the testimony. I am trying to make some estimate about when this hearing can be terminated. By the way, that reminds me——

Mr. Patterson: We will have some other testimony in [372] addition to that. It will be largely

BLEED THROUGH

documentary. I don't think there will be any witnesses.

The Court: Well, as I said, there must be an end to everything.

Mr. Patterson: We have two other witnesses on real estate values.

The Court: There must be an end to everything, even this.

Now, I am beginning to suspect that when this hearing is completed, there is going to be quite a mass of testimony and facts and argument for the Court to consider and analyze, and you gentlemen can aid the Court in this task by giving me a summary, in connection with the briefs—you can give me a summary of your arguments, just on the points that you submit to the Court, and give them in more or less categorical form; a sort of a summary, as in the Appellate briefs, if you can do that. In addition to your—to the argumentative portion of your briefs, which I do not wish to curtail, you can also submit an epitomization or summarization of your points, and where your point is based on a written exhibit, refer to it. That will aid the Court, instead of going back through all of this and analyzing all of this maze and mass of testimony, to say nothing of the report of the Interstate Commerce Commission, and I submit that you gentlemen might say that "we submit that the plan is unjust and inequitable for the following reasons", and on this side you can submit the [373] opposite, if you think that the Plan is just and reasonable; that the relative valuations are thus and so, and the relative earnings will be thus and so, and the relative yields will be thus and so, and what the Five Per cent Bondholders have now will give a value of so much; that they will receive a *quid pro quo* which is of less value. And, so, I wish you would just epitomize your argument.

Mr. Bourne: Yes, I will do it, sir.

The Court: So that I can take that as a sort of digest of your arguments, and I can go down through it and center my attention on those points.

Mr. Bourne: Yes, sir.

The Court: All right.

Now, tomorrow, Thursday, because of the fact that the Bar Association is having a noonday lunch at 12:30, I am going to recess tomorrow from 12:15 to 2:15. I will tell you that now so that you can make your plans, accordingly, and understand how zealous the Court is in giving you an extra half hour.

. . . And thereupon, a recess was taken to 2:00 o'clock p. m., of the same day, Wednesday, February 6, A. D. 1950.

[374] . . . And at 2:00 o'clock p. m., Wednesday, February 6, 1952, Court reconvened pursuant to adjournment of the preceding session and the following further proceedings were had:

The Court: All right, let us have order now.

Mr. Bourne: Don't you think it would be helpful to have the question read, your Honor?

The Court: Yes—just a moment. If the witness wants it read, all right, but you and I understand what it is, and if he can answer it as you gave it to him, have him answer it. Just let him go ahead.

Mr. John H. Bickley, having been previously produced and first duly sworn as a witness, was recalled to the witness stand and further testified as follows:

Further re-cross examination by Mr. Bourne:

The Court: Do you understand the question, Mr. Witness? A. Yes, sir.

BLEED THROUGH

By Mr. Bourne:

Q. Will you answer it? A. The assumption was that a person had thirty-five hundred dollars to invest. I invested that amount in Coast Line stock——

Q. He could invest it in Coast Line stock. [375] A. Could invest it in Coast Line stock.

The Court: A little louder, please.

A. That he could invest the thirty-five hundred dollars in Coast Line stock at 70 dollars and receive fifty shares. The Coast Line earnings in 1951 were $15.98 per share, as reported.

By Mr. Bourne:

Q. Of course, I am asking you to assume that that is the condition at the time at which he has the option in which to do it. A. Yes, sir. The fifty shares of Coast Line stock would give a beneficial interest in earnings of Coast Line in the amount of $799.00.

The second part of the assumption was that with the Florida East Coast stock at $100.00 a share, an investment of thirty-five hundred dollars would give thirty-five shares, with earnings on Florida East Coast of $6.56 a share, the earnings on thirty-five shares would be $299.60.

That was your question, Mr. Bourne.

Q. Well, the question was, assuming that situation and the client of yours having the thirty-five hundred and asking for your advice, which investment to make, what would you advise him? A. I have tried to give that careful consideration over the noon recess. And, what I find is this: That the purchase of Coast Line stock would be a purchase of (1) five dollars a share [376] dividend which would be $250.00, and (2) of a beneficial interest in earnings per share of ten dollars ninety-eight cents, which would be $549.00. Those two——

Q. That is an additional $10.98. A. Those two amounts added up to the $799.00 and measured in terms of earnings per share.

The purchase of the Florida East Coast stock would give an interest in $299.60.

After weighing all the matters that I believe are properly subject to consideration by an informed investor, my advice would be to buy the stock of the company with the tremendous growth prospect and put the thirty-five hundred dollars in Florida East Coast stock.

Now, I may go on? You probably will want to know something about my reason.

Q. I made a pretty firm commitment to ask only one question. A. Well, may I——

The Court: Wait a minute, Mr. Witness. Are you ready to stop?

Mr. Bourne: I would like to ask about two more, if I could.

The Court: Go ahead.

By Mr. Bourne:

Q. Have you made a thorough study of the Atlantic Coast [377] Line, its future and its growth prospects? A. I have examined the Atlantic Coast Line quite a bit recently, and in the past I have considered Coast Line along with other companies.

I would say I would never depreciate Atlantic Coast Line. But, you were asking me a question that requires the cash judgment and I am a very firm believer, as a great many people are, in buying into growth situations, and that is Florida.

It's not true, only of the Florida East Coast, it's true of the Florida Power and Light Company which has shown tremendous growth. I was amazed when I heard of their construction projects.

BLEED THROUGH

Now, you mentioned $15.98 a share, reported by Coast Line in 1951.

Mr. Davis testified before the Interstate Commerce Commission that the directors decided to raise Coast Line dividends early in 1951, and at that time the full impact of increase in expenses were not known. He testified further that by reason of decline in earnings and a tightening up in the cash consideration—cash situation, Coast Line was compelled to postpone maintenance——

Q. Don't you want to correct yourself on that, Mr. Bickley? A. No. No.

Q. Didn't he say they had to retrench on a large capital [378] expenditures program? A. And, on maintenance too, and in fact maintenance was reduced. And, in the forecast for '52 there was—oh, I believe an increase in the maintenance appropriation of around ten million dollars.

Now, that could have a bearing on reported earnings. About thirty-five percent of the operating expenses of railroads is in maintenance of its structures and equipment, and that maintenance is a very controllable expense. It can be made what man wants it to be from time to time, according to its earnings and cash situation.

I was surprised to hear the figure this morning of $15.98 per share, because through the twelve months it was running below the per share earnings in 1950. In—well, December, certainly created or brought about a quite changed condition as far as per share of earnings are concerned.

Now, there is another omission I should like to point out——

Q. Is this all in answer to my question? A. I am trying to give you my reasons for my judgment, Mr. Bourne.

The Court: Well, just stop it, right there. Everybody is pretty well satisfied. I don't mean, your whole examination. I mean the answer.

Mr. Bourne: I am through.

[379] The Court: You are through?

Mr. Bourne: Yes, sir.

The Court: I meant, to stop the witness, and not counsel.

Mr. Turney: May it please the Court, I would like to ask his reasons, if I could?

The Court: Very well. Don't be too long.

By Mr. Turney:

Q. Will you please state your reasons, without any inquiry or interruption from counsel? A. Another important factor in my judgment is one that has been recognized by investors services for years. Namely, the contribution of the L & N dividends to the earnings of Coast Line.

For years, Moody's Investors' Service carried a note under the heading of "Income factors", calling attention to the fact that for many years Coast Line did not earn its fixed charges before taking in the L & N dividends.

The stock of L & N is controllable by Coast Line, which owns it.

In 1946, it divested itself of the part of the stock-ownership, and I believe applied part of the proceeds on its debt, and the same situation obtains today.

The L & N makes a considerable contribution to the Coast Line, which, is not an operation of the Coast Line as a railroad. It's a benefit——

[380] The Court: Well, when you take the Coast Line as the owner of the L & N, it brings back that question to my mind. To what extent is it the owner, and to what extent does it hold the stock, if you know?

A. It now holds thirty-five per cent of the stock.

The Court: Wait a minute. The Atlantic Coast Line holds thirty-five percent of the stock of the L & N?

BLEED THROUGH

A. Yes, and up until 1945 or '46, it owned fifty percent, and they then sold part of its ownership or part of the shares held to bring down its interest to thirty-five percent.

I say, Moody's Investors' Service, which is a—a standard investors' service, have yearly called attention to these contributions of these L & N dividends to Coast Line earnings.

I have the figures and can give it to you, before and after.

The Court: Will you state whether that thirty-five percent stockholding interest is a controlling interest in the L & N? Whether the ACL dictates the policies of the L & N, or, could you answer that question?

A. Only in a general way. Thirty-five percent control of the stock of the corporation can mean effective control. In fact, public utilities companies were said to have effective control with as little as ten or fifteen percent stock ownership. It depends on how many people owned the remaining shares.

But, stock of the L & N, now held by the Coast Line, is a free asset [381] of the Coast Line. It can sell it or pledge it and if it pledges it, then it pledges the income from the stock.

Mr. Bourne: Your Honor, the figures on the ownership, the number of shares of stock and the percentages, are all in the Third Supplemental Report of the Commission.

The Court: I thought I had seen them back there somewhere, but I didn't want to stop to search for them.

Mr. Bourne: 823,427 are the shares owned by Atlantic Coast Line, per each share of common stock of Atlantic Coast Line, and that constitutes thirty-five percent of the total stock of the L & N.

The Court: All right.

Mr. Turney: Are you through with this witness?

Mr. Bourne: Yes.

The Court: Thus far in this testimony, this L & N matter reminds me that there has been no mention made of the P & O Steamship stock, which would pass to the Atlantic Coast Line with this Plan, giving the Atlantic Coast Line 100% ownership of P & O. In lieu of the fifty percent. I don't know whether you place any significance or weight on that matter or not. Is anybody going to discuss that, or will there be any reference to that in the evidence or the argument?

Mr. Bourne: It was before the Commission and referred to in the Commission's report.

The Court: I knew it was there but I wanted to know about it here. You plan to stand on the Commission's report?

[382] Mr. Bourne: We plan to stand on the Commission's report?

The Court: And you, Mr. Turney?

Mr. Turney: Yes, sir.

The Court: All right, go ahead.

(The witness Bickley excused.)

Mr. Turney: If the Court please, this evidence is directed to the assumption made in the Fifth Supplemental Report that the St. Joe Paper Company and the banks in the Florida National Bank chain, will probably be—I am quoting—"important shippers" over the lines of the Florida East Coast.

There was no evidence in the record, we maintain, to support that assumption, and we desire now to show it was an unsound assumption.

As I stated before the noon recess, to do that with competent witnesses, will require nine witnesses. I have here, a witness, of the St. Joe Paper Company, who has prepared the information for each of the banks and the paper company. If there is an objec-

BLEED THROUGH

tion—I have distributed the exhibits—if there is an objection, I will withdraw the witness and proceed to call——

The Court: Let me digress here and parenthetically, and briefly determine this. Is it going to be one of your contentions that the provisions of the administrative procedure act apply to such a hearing as this, particularly that on the evidence assessed as a whole, as Justice Frankfurter said,— [383] The administrative body has reached an erroneous conclusion that the Court can review it?

Mr. Turney: Yes, sir.

The Court: Are you going to contend that such a matter applies to this as coming from the Interstate Commerce Commission?

Mr. Turney: Yes, sir.

Mr. Bourne: Well, I don't concur in Mr. Turney's summation of the Commission's findings. I have not previously seen these exhibits. I am entirely willing to stipulate that they be accepted, as they are, in evidence, with the understanding if it is agreeable that I will have a chance to object not later than—and notify Mr. Turney—not later than, let's say five-thirty this afternoon.

The Court: That is, object to the accuracy?

Mr. Bourne: Yes.

The Court: Is that clear enough?

Mr. Turney: Yes. These people are in South Florida and I will have to get them here by train tonight.

Mr. Bourne: I am content to have them admitted now and not trouble this witness to bother with them.

The Court: What you have said, Mr. Bourne, applies to the proposed Exhibits N and O, that he has here?

Mr. Bourne: Yes, sir.

The Court: They are admitted on your stipulation subject [384] to admission of counter-testimony on the accuracy——

Mr. Bourne: No. My thought was I would move—I would notify Mr. Turney no later than five-thirty, that I would move to strike them out on the grounds stated. He agrees that they are not competent. As he says, it is just saving time——

The Court: This witness is a person who merely compiled these things and has no knowledge of their accuracy.

Mr. Bourne: That is true. He agrees they are not technically admissible, now, but I don't object to their admission subject to a motion to strike to be made tomorrow morning after prior notice to Mr. Turney at five-thirty this afternoon.

The Court: Motion to strike, for what?

Mr. Bourne: On the ground they are incompetent.

The Court: Mr. Turney admits now, technically, they are incompetent, and inadmissible, on this witness' testimony. I understood you were waiving that, subject to your having checked them and see if they tell the truth.

Mr. Bourne: I can't tell now by looking at them. I want to see if—if they are of any importance or not.

The Court: You see what they are. And, Mr. Turney is making his offer, or his contention, that the Commission was in error that the St. Joe Paper Company would be an important shipper over this road. That's the reason I asked him whether the ruling announced in the Universal Camera case, and the Pittsburgh [385] Steamship case applies here, and he says it does. Now, we better get back on the point, after these lawyers have been talking.

You want to at least admit these in evidence subject to a motion to strike later?

BLEED THROUGH

Mr. Bourne: Subject to a motion to strike later, or, mark them for identification and if I don't notify Mr. Turney this afternoon of their inadmissibility, they automatically go in tomorrow morning.

The Court: What about you, Mr. Turney?

Mr. Turney: That is agreeable.

The Court: I would like to avoid the necessity of calling these witnesses here and going through the formal testimoney if I can.

Mr. Bourne: I fear, after examination, that is what will happen. I have just seen them.

The Court: That is only in the interest of time. I know you have your troubles too.

I will admit Exhibits N and O in evidence subject to a motion to strike being made tomorrow morning, no later than ten o'clock.

Mr. Turney: I would like to show how they were compiled and under what instructions.

. . . The instruments last above referred to were received and filed in evidence and marked Exhibits N and O respectively.

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[386] Mr. Robert S. Bartlett having been produced and first duly sworn as a witness, testified as follows:

Direct examination by Mr. Turney:

Q. What is your name? A. Robert S. Bartlett.

Q. Where do you live? A. 4535 Huntington Road, Jacksonville, Florida.

Q. Are you employed by St. Joe Paper Company? A. Yes, I am so employed.

Q. And in what capacity? A. As an accountant.

Q. Were you requested by me to obtain a list of all shipments made by the St. Joe Paper Company— A. Yes, I was—a request was made and this information is based on that request.

Q. Have you obtained such a list? A. Yes, I have.

Q. Is that list shown in Exhibit N for identification? A. Exhibit N shows the information requested, that being shipments over the lines of the Florida East Coast Railway made on behalf of St. Joe Paper Company, between the period January 1, 1947-December 31, 1951, inclusive.

And also such shipments made on behalf of the Apalachicola [387] and Northern Railroad for its own use.

Q. That is a wholly owned subsidiary of the St. Joe Paper Company? A. It is.

Q. Now, let me ask you, looking at the first sheet of Exhibit N, whether or not the first shipment, the one shown in 1947 was made by the St. Joe Paper Company, and for which it has a copy of the bill of lading? A. Yes, that shipment was made from the St. Joe Paper Company to the purchaser.

Q. And was that shipment made over the Apalachicola and Northern Railroad? A. Yes, the Apalachicola and Northern is the only direct connection with the mill at Port St. Joe, and such a shipment was made, originating on the Apalachicola and Northern and passed over the Florida East Coast en route to its destination.

Q. Now, with respect to that shipment and all of the other shipments shown on that page, and on the next page of Exhibit N, where did you obtain the information with respect to the Florida East Coast revenues? A. The information shown on the exhibit was obtained primarily from checking the way bills and abstracts of way bills of the Apalachicola Northern Railroad. Inasmuch as the invoices of the St. Joe Paper Company and its voucher files did not disclose payments made directly the Florida East Coast [388] Railway.

We have also—we also maintain, in the shipping department of the mill, for the use entirely—administrative use of the shipping department, shipping records so as to determine that we are fairly distributing shipments to and from the mill, over the various roads, and that information is also disclosed on such records.

BLEED THROUGH

Q. Now, let me ask you whether or not you caused an examination to be made of all of the records of the St. Joe Paper Company from January 1, 1947 through December 31, 1951, to get all shipments which moved over the FEC, the Debtor, and which were consigned by or to the St. Joe Paper? A. Yes, I directed that such examination be made and personally made part of it as relates to the records in the Jacksonville office. The disbursements in the Jacksonville office, and we made an examination of the voucher files in the Jacksonville office and found nothing, other than passenger fares and pullman fares being paid to the Florida East Coast.

Q. Did you also do the same thing with respect to the records of the Apalachicola and Northern Railroad? A. Yes, sir.

Q And to the best of your information, that constitutes all the shipments that were made by the St. Joe Paper Company and the Apalachicola and Northern Railroad during the five year period? [389] A. That is correct. And also other subsidiaries of the St. Joe Paper Company. We did not have exhibits, because there was no information at all found as to subsidiaries of the Paper Company.

Q. Did you examine all records of all subsidiaries of the paper company? A. They were examined.

Q. Now, do you know anything about the shipment of 867,000 pounds of reinforcing bars in 1951? A. I do know about that item. I was present when the original discussion of making the purchase, that resulted in making that shipment, occurred, and I have recently discussed with the party who made the purchase, Mr. Whitney, manager at Port St. Joe.

Q. Was there anything unusual about that shipment? A. It is unusual only in that it is the first time that we can recall ever having made such a purchase in Miami, Florida, and it was made because of the extreme scarcity of steel, and it was found available in Miami.

Q. Was that imported steel? A. That I could not answer, Mr. Turney.

Q. But do you expect in the future, similar shipments to this shipment? A. I have no reason to expect them, but I really have no reason to have any expectation on it, except steel is scarce, [390] and where we find it, we will buy it.

Q. At this time it was so scarce you bought it in Miami? A. Yes, this is the first time in my memory.

Q. Now, what did you do with respect to obtaining the information shown on Exhibit O? A. Exhibit O, the information obtained from the various banks of the Florida group, which are affiliates of the St. Joe Paper Company, I wrote a letter to the president of each of the banks along the road of Florida East Coast railway, directing——

Q. Do you have your copies of that letter here for examination? A. Yes, I have copies of each letter.

Q. Go ahead. A. I directed that they make a thorough examination of their records; prepare a memorandum to be forwarded to me, and at the same time to forward all freight bills.

I emphasized that it is necessary that we have the desired information submitted in as complete and accurate fashion as possible, as it was of importance to us.

I subsequently talked to the president of each and every bank—that's after receiving the information—called them on long distance telephone to confirm that their—that a thorough search had been made and no further information was available.

Q. Did you receive the freight bills and a statement from [391] the president of each of the banks that such a search had been made and that this was all the shipments? A. I received a memorandum, listing the information, together with the freight bills which were available in the banks.

In some instances the freight bills, going back into the year '47 and the year '48, were no longer in the files, and only in the case of a bank which has moved, in that period and changed quarters, there was one, that being the local bank in Jacksonville, Florida, which has no record of any

BLEED THROUGH

shipments whatsoever, and they submitted a memorandum to me stating that fact.

Q. Did they have records of shipments over other railroads? A. Yes, most of the shipments being incoming, and, matters of stationery, as is shown by the exhibit. The local bank receives them from northern stationery houses, and locally, and there was no use to ship over the Florida East Coast.

Q. Now, can you tell me whether or not—well, strike that question. Have you totaled up the total amount of the shipments on N & O? A. I have totaled them but merely have a small scratch memorandum for myself, here.

Q. Well— A. The total for the banks over the five year period—that is, paid by the banks, $4,227.70. There are numerous prepaid items as disclosed on the exhibits.

[392] A total of prepaid items, $236.35.

Q. Making a total of? A. A grand total of $4,464.05.

Q. And the total for the St. Joe Paper Company and Apalachicola and Northern? A. That, Mr. Turney, is shown on the exhibit for the St. Joe Paper Company, total, five years, $3,202.74.

For the Apalachicola and Northern Railroad a total for the five year period of $41.92.

Q. Does that make a total of $3,244.36? A. Would you repeat that, please?

. . . The question was read.

A. For the Atlantic Coast Line—I mean for the paper company and the railroad?

Q. Yes. A. No, sir. I see I am wrong without looking further.

Q. I want the correct answer. A. It's $3,244.66.

Q. And the grand total of banks and paper company and railroads? A. $7,708.71.

Q. Now, that's for five years? A. That is for the five year period January 1, 1947 through December 31, 1951.

Q. And that averages approximately one thousand five

[393] hundred per year? A. It does.

Mr. Turney: That is all on direct.
Mr. Bourne: No cross examination.
The Court: All right, come down.
Mr. Turney: That finishes my examination.

(Witness excused.)

Mr. Patterson: If your Honor please, I have some documents here. Some of them are rather lengthy. I would like to read short excerpts which I consider most pertinent and I will furnish a memorandum of those and indicate what portions I think are material.

If Mr. Bourne wants to put them all in or if he wants me to put them all in, he has a perfect right to do so.

First, however, before I get to those others, I have certified copies of the minutes of the Board of Directors and Stockholders of the Atlantic Coast Line Railroad Company, meeting of Board of Directors, November 3, 1944.

Meeting of Board of Directors October 18, 1945.
Board of Directors meeting August 9, 1946.
Board of Directors meeting June 2, 1947.
Stockholders meeting May 14, 1948.
Board of Directors meeting June 17, 1948.
Board of Directors meeting of October 21, 1948.
Board of Directors meeting January 25, 1949.
[394] Board of Directors meeting June 15, 1950——

Mr. Bourne: That is an Executive Committee meeting.

Mr. Patterson: Is it? I beg your pardon. The one on June 15?

Mr. Bourne: No, January 25.

Mr. Patterson: I beg your pardon, it is an Executive Committee meeting of the Board of Directors.

BLEED THROUGH

Mr. Bourne: August 9, 1946 was Executive meeting of the Board of Directors. Did you mention that?

Mr. Patterson: August 9, 1946, did you say? I will correct it. I was reading too hurriedly. He is correct. Meeting of the Executive Committee of the Board of Directors August 9, 1946.

Then, he corrected me on the other one.

January 25, 1949, meeting of the Executive Committee. January 25.

Excerpts, meeting of Board of Directors, June 15, 1950.

Excerpts of minutes of meeting of Board of Directors July 20, 1950.

Excerpts of minutes of meeting of Board of Directors, November 15, 1951.

Excerpts of minutes of Board of Directors meeting December 20, 1951.

Excerpts of minutes of Special Meeting of Stockholders January 15, 1952.

[395] These minutes were all furnished me by counsel for the Coast Line. I had given notice under the rule for the production of these minutes and opportunity to examine them and Mr. Howell very kindly offered to furnish me with the excerpts, which I have accepted on his assurance that these are all of the excerpts of the three bodies. Executive Committee, Board of Directors and Stockholders, which relate to the acquisition or proposed acquisition of the East Coast by the Atlantic Coast Line.

The Court: Well, what do you seek to establish by this?

Mr. Patterson: Well, your Honor, I would like to read two or three quotations from them, briefly. The minutes, as a whole, are not directly important, but inasmuch as they were bound together when they were furnished to me, I would like to read them because it gives a complete study of the transaction.

The first minutes, the first two paragraphs have a direct bearing in my opinion, on one of the issues in this case, which is entirely different than that which has been developed by the technical testimony. Would your Honor permit me to read these two paragraphs?

The Court: Well, you can start and we will see.

Mr. Patterson: (Reading) "Board of Directors meeting——"

Mr. Bourne: Won't you say when the meeting was? Meeting of Board of Directors?

Mr. Patterson: (Reading) "Meeting of Board of Directors [396] November 3rd, 1944.

"The president stated that the Florida East Coast Railway, now in the process of reorganization under Section 77 proceedings, is one of a substantial volume of traffic, both freight and passenger, with this company and any diversion of that interchange of traffic could cause serious loss in this company's gross revenues.

"He further stated that the rails of the Florida East Coast Railway represent a logical extension of this company's lines into the lucrative East Coast section of Florida, not now directly served by this company, and that he has for a number of years considered it was desirable that this company should acquire that property or control thereof and operate same as a part of this company's system, but that circumstances and conditions to this time have made it impracticable for this company to take any action to effect such acquisition or control.

"He stated that thorough studies based on operations during representative pre-war periods, as indicative of what may reasonably be expected in future years, had arrived at the conclusion that the property operated as part of this company, with consequent operating savings, should produce average

BLEED THROUGH

annual net earnings available for fixed charges of about $1,700,000.00 which would be sufficient to meet reasonable fixed and contingent charges and leave some residue of profit [397] for this company.

"The president further stated that because of the public interest factor involved in any proposal for the acquisition or control of the Florida East Coast property, it might not be feasible to close any of the existing routes over which said railway delivers traffic to and receives traffic from railroads which compete with this company for such traffic, but nevertheless the advantages of being an 'originating' and 'terminating' line in Florida East Coast territory, which is perhaps the most highly developed section of the State of Florida, should produce for this company added earnings on additional traffic which would be transported by this company beyond the line of the present Florida East Coast railway, that is, north of Jacksonville, although the amount of such added earnings cannot be properly evaluated".

Now, there is further discussion of it there, and it relates to the terms of the agreement. I don't care to go any further.

I want to read one page from the next meeting, of October 13, 1945.

(Reading) "The Chairman further stated that thereafter the company's officers"——

Mr. Bourne: Excuse me a minute, Mr. Patterson. This is October 22, 1945.

Mr. Patterson: Yes.

[398] Mr. Bourne: Which page? Only one page.

Mr. Patterson: That is only one page.

(Reading) "The Chairman further stated that thereafter the company's officers gave an exhaustive consideration to the introduction of a plan whereby all of the property of Florida East Coast Railway Company would be merged or consolidated with this

company under section 77 (b) (5) of the Bankruptcy Act, and then submitted to the Board a plan which he stated had the unanimous approval of the officers of the company and their advisors and which he recommended that the Board approve and order filed with the Commission on behalf of this company".

Which was their first plan.

Now, the other statements I don't care to take up your Honor's time in reading. Some of it contains quite a bit of material about the change in the Coast Line's preferred stock and common stock relations, and one or two changes that were authorized in the minutes from time to time. And, one was referred, or offered during the pendency of the meeting, and shows a change in the amount of cash which the bondholders would be allowed——

Mr. Bourne: You mean during the pendency of the hearing.

Mr. Patterson: Yes, sir.

Mr. Bourne: I thought you said "meeting".

Mr. Patterson: The stockholders adopted a plan on unanimous recommendation of the Board, in another meeting. [399] Most of it is more or less routine.

I would like to call attention to the minutes of the Board of Directors of October 21, 1948, which authorized the filing of a notice similar to the one which has been filed here, and Mr. Bourne started to offer yesterday. They have not yet been introduced. In which the Coast Line agreed to accept the plan—what we call the Third Plan,—which consists of the Third and Fourth report.

(Reading) "The president further stated that this company's counsel in said reorganization proceedings have taken the position, on instructions of the proper officers of the company, that under the Commission's plan, the Court has the power to deter-

BLEED THROUGH

mine consistently with the Commission's plan, the total amount of cash which shall be distributed to the holders of the Florida East Coast Railroad Company First and Refunding bonds from the estate of the Florida East Coast Railway Company or from any payment or payments to be made by Atlantic Coast Line Railroad Company and the total amount of cash which shall be paid by Atlantic Coast Line Railroad Company in respect of (a) the cash payment of $4,125,000.00 referred to in the Plan and (b) the additions and betterments referred to in the Commission's report of March 25, 1948."

And then later there was adopted by the stockholders at a subsequent meeting, in which they referred to both orders of the Court, the order of 1947 and 1948, and then the last [400] minutes here are the ones he has not yet introduced, which merely adopts or accepts the Plan which is now before the Court.

I think that there is nothing else. As I say, they are all bound together here. If counsel, or anybody wants to check them?

The Court: Does anybody have any objection to these?

Mr. Bourne: No objection.

The Court: Let them be received.

Mr. Patterson: I would like to put them all in as one exhibit.

. . . The instrument last above referred to was received and filed in evidence and marked St. Joe Paper Company Exhibit X.

Mr. Patterson: At the last hearing on the Third Report, if your Honor please, I presented some testimony. I read it. The Coast Line has admitted the accuracy of it, and at this time I have a certified copy of it, which I will be glad to let the counsel see. This is of the same character.

In 1949, your Honor will find in the record, testimony that was taken before the South Carolina Railroad Commission, or in the Federal Court, I have forgotten which it was—it was the same case in both cases—and also testimony given by officers of the Atlantic Coast Line Railroad Company before the Florida Railroad Commission, in St. Petersburg, in the case involving taking off a train.

[401] This testimony is to some extent a duplication—the exhibits are—but it brings down for another year, the factual basis to which I should like to refer, and I would like to offer—I have the whole record, Mr. Bourne, but I wanted to put in only two short exhibits.

[402] Mr. Bourne: What is the date of this?

Mr. Patterson: The certification here—it's January, 1950 and February, 1950. February 15, 1950. In reference to taking off trains between Georgia and Alabama state lines, testimony given by Mr. Anderson.

Mr. Bourne: Who is Mr. Anderson?

Mr. Patterson: Assistant Comptroller of the Atlantic Coast Line.

Mr. Bourne: I will object, your Honor. It is evidence which could have been introduced before the Interstate Commerce Commission in July and August, 1950, and, on the grounds, it is altogether too remote.

Mr. Patterson: I never heard of this thing in '50. I didn't know anything about it until two or three months ago. If I had had it, I would have put it in.

Mr. Bourne: It is similar to the type of material introduced before Judge Sibley. It pertains to the Coast Line. The Atlantic Coast Line earnings have been gone into in the greatest detail before the Commission. The Commission has a most voluminous report before it. This happens to be another repre-

BLEED THROUGH

sentation made by the Comptroller at a date prior to the Commission hearing. I object to it.

The Court: I don't think your first objection is tenable, because the statute provides for the taking of additional testimony on the plan under consideration, by the court.

[403] Mr. Bourne: My position would be that where things relate to events that took place long before hearings before the Commission, a party may not come before the Court and offer evidence irrespective of those things. It seems to me, otherwise the Commission is put in an unfair and improper position, assuming matters that are not significant. I don't believe they are significant.

The Court: Well, I have considered this question under the Securities & Exchange Act, where there is no provision. I will admit it. I want to see this whole picture, as far as pertinent here. I will go ahead and admit that and see what it says.

Mr. Howell: Mr. Patterson, what was the number of those trains? 57 and 58?

Mr. Patterson: I think that is right. I have examined the record. About 95% of the testimony relates to local matters, and I only have two short parts of Mr. Anderson's testimony and two exhibits.

Mr. Bourne: Have you copies of them?

Mr. Patterson: No, that's all I have. Here are the exhibits. You may look at them.

Mr. Bourne: I suppose I can get copies, but I think you ought to supply counsel copies.

Mr. Patterson: Well, I would have been glad to if I could have.

[404] The Court: Go ahead with the reading of that, if you want to.

Mr. Patterson: I just want to refer generally to the nature of the information and the exhibts as shown.

Net railway operating income for 1946, $1,550,-779.00.

Fixed charges $4,027,483.00.

And adjusted net railway operating income, $2,476,704.00.

In 1947—now, these figures——

Mr. Bourne: I think I ought to have an opportunity to look at this exhibit in its entirety. We had this same situation before Judge Sibley.

Mr. Patterson: Those two years are before Judge Sibley and two more years added to it.

The Court: I think we will have to proceed and let it be read and then you will have opportunity to look at it and determine whatever part you think is wrong.

Mr. Patterson: In 1947, net railway operating income, $2,019,642.00.

Fixed charges, $4,055,425.00, or a net deficit of $2,035,783.00.

In 1948, net railway operating income was $5,126,754.00.

Fixed charges, $3,991,327.00.

With a net railway operating income of $1,135,427.00.

He shows it over here that the adjusted rate of return on investments in that year was 28/100ths of 1 percent before [405] deductions of depreciation and amortization.

And, 35/100ths of 1% after deduction of depreciation and amortization.

In 1949, net railway operating income $6,753,-899.00.

Fixed charges $4,276,863.00.

$2,477,036 adjusted net railway operating income.

The rate of return, 59/100ths of 1% in the one case and 75/100ths of 1% later on.

BLEED THROUGH

Now, that is all I want to read from that, but there is a statement here which will shed light on the question, your Honor, just raised, with reference to the L. & N. I might add that I am not misquoting the figures, because Mr. Anderson repeats those figures in his testimony.

Now, on Page 45, we have the reference to the L. & N. dividends. He was asked about it.

The Court: Page 45 of what?

Mr. Patterson: Of this same record. Of testimony. He was asked by counsel about certain published documents purporting to show the financial status, and this question was asked:

"Question: Well, you couldn't pay dividends on your common stock, could you, unless you did it out of earnings or surplus?

"Answer: We pay our dividends, not out of railroad earnings, sir. The Coast Line, very fortunately years ago acquired some securities, back in 1901, and the dividends we [406] collect on those securities is more than ample to pay what dividends has been paid on the Coast Line stock.

"Question: As a matter of fact, though, the Coast Line Railroad has been able to pay dividends on both its preferred and its common stock, has it not?

"Answer: Not from railroad operations.

"Question: Well, from what it owns?

"Answer: Yes, but the items of dividends is not an item to be considered in figuring the results from operating a railroad. It is no part or parcel of the railroad operations. The securities from which we earn the dividends were not acquired with funds from railroad operations.

"The securities were acquired through the issuance of bonds and the bonds were retired from the dividends we got on the same securities.

"As an example, during the years 1946 through 1949, the Coast Line, from its investments in its portfolio, collected fifty-three million dollars in dividends."

Then he goes on to tell about the L. & N. stock.

He said:

"Question: Well, is that portfolio mainly composed of stocks and bonds of other railroads?

"Answer: Principally L. & N. stock and during this same period we paid out dividends of $25,700,000.00. Based on the 823,427 shares of ACL common stock that is out, the Coast Line in that period of fourteen years paid $2.23 a share on its [407] stock, whereas based on the same number of Coast Line common shares that it has outstanding it collected $65.00 a share, and it is out of this $65.00 that that dividend is being paid, it's out of that same $65.00 that the Coast Line has been operating on in these periods of lean revenue, and it's out of that same $65.00 that the Coast Line has been acquiring its additional properties. Not from railroad operations."

The stock, he says, was acquired in 1902.

Mr. Patterson: That is all I care to read. You may examine that page 45.

Now, I have certified copies here of the application of the Atlantic Coast Line for authority to negotiate privately for the refunding of its bonds.

I have three other documents—here is the application. I would like to offer the application of the Coast Line for authority to sell securities without competitive bidding and the order of the Commission on it.

Mr. Bourne: No objection.

BLEED THROUGH

. . . The instrument last above referred to was received and filed in evidence and marked ACL Exhibit No. Y.

[408] Mr. Bourne: I am a little confused on these exhibits, Mr. Patterson. This follows Exhibit X. The other papers are not introduced as exhibits; is that correct?

Mr. Patterson: Which are those?

Mr. Bourne: The ones which relate to train discontinuance.

Mr. Patterson: Those are a part of the certified record. They are all connected, and one exhibit, and Mr. Anderson testified relating to it.

Mr. Bourne: Has that been offered?

Mr. Patterson: I will offer these two exhibits, two sheets, Exhibit Number 3 and Exhibit Number 4, attached to and made a part of the record, a certified copy of the record in the case of— Let me see that record. That has the title on it. Have you got that? Is that your copy? I beg your pardon. I gave Mr. Bourne my copy. I want the name of the record. That is what I want. The title of the case. Your Honor, please, it does not seem to have any title on it, but it is File No. 19470, Docket No. 95259, before the Georgia Public Service Commission, February 15, 1950, application by Atlantic Coast Line Railroad Company for authority to discontinue operation of passenger trains Numbers 57 and 58 between Savannah and Georgia-Alabama State line. These are the two. That all goes together there.

. . . The documents last above referred to were received and filed in evidence and marked St. Joe Paper Company Exhibit Z.

Mr. Patterson: Now, recently, within the last year or [409] more, there has been pending before the

Interstate Commerce Commission a proceeding known as Ex Parte 175, Increased Freight Rates, in which Mr. Davis——

Mr. Bourne: I am sorry, Mr. Patterson, but has the competitive bidding exhibit been marked?

Mr. Patterson: Yes, sir.

Mr. Bourne: What number?

Mr. Patterson: What did you mark that?—Z?

The Clerk: This is Z; the application is Z, and the testimony of Mr. Anderson is marked Y.

Mr. Patterson: They are all certified together. They should be marked as one exhibit.

I have here certified copy of what is called a verified statement by Mr. Davis, president of the Atlantic Coast Line Railroad Company, and there are certain statements in there to which I would like to refer, and I would like to offer the document in evidence. I shall limit this very materially, because a good deal of it is duplicated in the subsequent ones.

Well, I would rather just offer the document as it is without stopping to read anything from it, Mr. Bourne.

Mr. Bourne: This is February 20, 1951, with Exhibits 12 and 12-A attached.

The Clerk: It will be A-1, Mr. Reporter.

Mr. Bourne: Just one moment.

[410] Mr. Patterson: That is all right.

Mr. Bourne: That will be AA, will it?

The Clerk: No, A-1.

Mr. Bourne: All right.

The Court: You have already got an A-1 or something like that. You had better follow the new series beginning with AA.

Mr. Patterson: All right.

. . . The document last above referred to was received and filed in evidence and marked St. Joe Paper Company Exhibit AA.

BLEED THROUGH

The Court: I think you can just run the rest of them out "and so forth."

Mr. Patterson: Yes, sir.

Mr. Bourne: I won't make any objection. I wanted to make a note so I could get a copy of it.

Mr. Patterson: Now, I have here a certified copy of Mr. Davis's testimony given on May 18, 1951 in the same proceeding. There is testimony of three other witnesses in this bound copy, which is not material.

Mr. Davis' testimony extends from page 90 to page 166. Now, I should like just briefly to state the substance of what it contains. I will give you the pages that I shall particularly refer to, and I will introduce the whole thing, as I did the other.

Mr. Bourne: There is no objection, but I would rather [411] have it read——

Mr. Patterson: All right. I will read it.

Mr. Bourne: (Continuing)—verbatim, rather than just a summary.

Mr. Patterson: All right.

Mr. Bourne: I mean the portions that you do read.

The Court: You are not going to read the whole thing, are you, from 90 to 166?

Mr. Patterson: No, your Honor; only four or five pages if the Court please.

The Court: All right.

Mr. Patterson: I have got it all here on a sheet or two.

(Reading):

"In late 1948, and in 1949——"

This is in answer to a question as to why there was an increase.

"—due to the decline in volume of traffic and increasing expenses Coast Line was forced then to

curtail sharply its maintenance programs both way and structures and equipment. But with the pick up in volume of traffic handled by Coast Line, starting in May, 1950, and when by August, 1950, the prospect was that the increase in traffic volume might be the beginning of a continuing trend, there began a partial restoration of Coast Line's maintenance forces in August, 1950.

[412] "Such partial restoration of maintenance forces was gradually built up from August, 1950, through first quarter, 1951.

"However, in late March, 1951, it became obvious that improvement in gross revenues, while appreciable, was not sufficient to offset the mounting costs of operation with which we are faced, and to provide a sufficient spread between revenues and expenses to permit, at the first quarter, 1951 levels, continuation of the maintenance programs and at the same time to produce the cash required for Coast Line's substantial commitments. Therefore, commencing in late March, 1951, it became necessary to again curtail, or in instances suspend, our maintenance programs.

"Such curtailment or suspension can only be regarded as temporary, since the work contemplated in the suspended programs is essential and cannot be too long deferred. The program cannot, however, be resumed until the necessary funds, through earnings, become available.

"Present and anticipated volume of traffic alone is insufficient to provide Coast Line with the necessary funds, and increased rates and charges are required.

"Q. So your situation is that it is so serious in your judgment that you have had actually to lay men off? A. Yes, of course, if we do not get relief through increased earnings we will lay more men off.

BLEED THROUGH

[413] "Q. What do the reductions mean in number of employees and in reduced monthly pay rolls? A. Reductions in Coast Line forces affected in March-April, 1951, amounted to 1,142 employees, with resultant reduction of $302,000 in monthly pay rolls. In addition, it was necessary to discontinue, or to suspend, certain important maintenance work which was being performed by outside contractors for Coast Line. This resulted in reduction in an unknown number of men in contractors' forces engaged in work on Coast Line property, and reduction of $437,000 monthly in amounts paid to those contractors. There will be reductions in addition to the $437,000 monthly in amounts paid to contractors as projects now being accomplished by the use of contractors approach the early completion of each presently unfinished job.

"The payroll reduction, company forces and contract work combined, which presently amounts to $739,000 per month, represents by no means a true saving, because this essential work has been only deferred. It must hereafter be performed and paid for when the cost of doing the work may be even greater than represented by present costs."

Mr. Bourne: Will you give me the date, and pages, please?

Mr. Patterson: That is May 18, 1951, and I began reading near the top of page 98, and I read down to almost the bottom of page 99.

[414] Now, I will skip over. There is a good deal of this that I don't think I can take so much time on. I will skip over to page 107?

(Reading:)

"Q. What do principal payments on present equipment obligations amount to, in dollars? A. Using round figures, the amount of principal install-

ment payments on present equipment obligations will be:

"Year 1951, $6,147,000; year 1952, $7,800,000; year 1953, $7,540,000; year 1954, $7,540,000, and year 1955, $7,522,000. Total for five years, $36,549,000.

"This total of $36,549,000 represents for the five-year period an annual average of approximately $7,310,000.

"During the four years previous, 1947 to 1950, inclusive, Coast Line's total payments on equipment obligations amounted to $13,836,000, or an annual average of $3,549,000."

That is an increase of about four million dollars in the meantime.

(Reading:)

"This means the Coast Line must, for each of next five years, 1951 to 1955, inclusive, find sufficient cash to make annual installment payments which will average $7,310,000, or $3,851,000 more than the average annual payments of $3,459,000 of the four years previous, 1947 to 1950.

"Q. What about the program of modernization and extension of signaling? [415] "A. Lines 13 to 15 represent only the capital requirements—property investment account—for the program of modernization and extension of signaling mandatory under orders in I. C. C. Dockets 28750, Sub No.—Dockets 28750, 28750, Sub Nos. 16 and 29543. That program will require an estimated additional $10,000,000 over the five-year period, or an annual average of $2,000,000."

Mr. Patterson: Now, I will skip some of this.

Mr. Bourne: That ends up where?

Mr. Patterson: That ends up on page 108, about the middle of the page.

BLEED THROUGH

Now, on page 109, there is a summary of the moneys which were needed, and while it shows $68,937,000 for the five years, $22,000,000 of that is for maturing bonds, which I won't deal with here, but it is a total of some forty million dollars.

(Reading):

"Q. What effect will that increasing equipment debt have on total indebtedness? A. To pay for power and equipment to be delivered during 1951. Coast Line will add equipment debt in 1951 estimated at slightly more than $50,000,000.

"This will cause equipment debt, at December 31, 1951, to reach an estimated $88,091,264, or nearly seven times as great as at December 31, 1946——"

Five years before.

[416] (Reading): "—when the equipment debt figure was $13,492,165. And will bring over-all debt, including bonded debt, to an estimated $169,847,464, which will be about seventy-five per cent greater than the total at December 31, 1946, when it totaled $96,997,365."

Mr. Bourne: What page is that, please?

Mr. Patterson: That is page 110.

Mr. Bourne: Thank you.

Mr. Patterson: Well, I am going to skip some of this in the interest of economy. There is a good deal of detail here as to the needs and the trends, and I will not explain them. I think one statement on pages 114 and 115 is right interesting.

"Q. Are you apprehensive that the increases—" That is, rates. "—here sought would drive business from the rails. A. No. Other forms of transportation, including unregulated trucks, cannot escape the rising costs of operation and they, too, are finding it necessary to increase charges for their services."

That is repeated again, later on.

On page 117, during 1950, the Coast Line obtained a total of 609 freight cars— Well, I won't go into those details. Here is a summary of it:

[417] "In the two years, 1950 and 1951 the Coast Line has arranged to add a total of 3,700 cars to its freight car ownership—lease from Equitable being, in so far as availability is concerned, the equivalent of ownership.

"The management is considering placing further orders, but can do so only if earnings permit.

"The cars already on order, and such additional cars as may be ordered, must of course be paid for, and dollars to pay for them can come only from or through earnings. That fact is one of the principal reasons why we need the increase in freight rates now sought.

"Q. And over and above needed restoration of maintenance programs, Coast Line must have a substantial residue of net income to meet outstanding cash commitments; is that correct? A. That is correct."

Mr. Patterson: That is his direct examination.

Mr. Bourne: That is page 117?

Mr. Patterson: That is page 120. And, he gives their requirements for their capital expenditures, and which more or less is repetition.

This is at the bottom of page 121:

(Reading):

"Q. I take it from what you have just said that you regard it as essential to the well being of your railroad that the increase here proposed be authorized. Is that right? [418] "A. Yes. Coast Line must have relief through increased freight rates to be able even to meet commitments already made. More funds are needed to resume essential maintenance programs recently necessarily curtailed because of lack of dollars.

BLEED THROUGH

"It is evident that the railroads cannot long remain solvent if, on the one hand, they are forced to pay the rising wage costs forced upon them; to pay the rising costs of materials; to bear increases in taxes——"

Mr. Patterson: And so forth. That leads into something I am not concerned with.

Now, on page 125:

(Reading):

"Q. Would you be willing to recommend to the other railroads that you think the application should be amended by yours, and the other lines, to cover only your increased costs to which the Government would heartily concur? A. I have said to you that the rate of return which we would receive under the authority if granted to permit us to increase our freight rates to 13.3 per cent interstate and intrastate would represent a rate of return which I think is low."

Mr. Patterson: At the top of page 139, he verified the fact that the amounts on page 6 of Exhibit 63—that the amounts were actually committed at that time.

[419] At the bottom of Page 161,—this was his cross examination.

(Reading):

"On the basis of that, Mr. Davis, offhand it would appear not clear why it was necessary for drastic curtailment of maintenance work.

"Answer: Because we are running out of money, running out of dollars, and they can come only through earnings. We have this enormous wage increase that is upon us, plus the increased cost of materials and supplies compared with 1950, and that is the answer to you.

"Question: When was the decision made, or approximately at what time, to curtail maintenance work."

Mr. Patterson: Well, that is not important. I will skip that.

Now, on Page 163—it begins—the question is on the bottom of the Page 162. I will read the question so that it will be clear.

(Reading):

"Question: As of the date when the decision to curtail was made, was it then the thought of the company that if the normal maintenance work proceeded there would be for 1951 smaller net income and net railway operating income?

"I think I might say——"

Mr. Patterson: This is the answer:

[420] (Reading): "—that we of course, anticipated that we would obtain the interim increase of 6% State and interstate, and we did not commence to curtail until we found out so that so far——"

This is a little mixed up.

"—so that so far as the south was concerned, or more particularly, so far as the Coast Line was concerned we would wind up with an increase of only 1.77%, and that assumes something that we have not gotten, that is, intrastate application of the same basis of the increased rates. But when we took stock of what was before us we then decided to curtail our maintenance force, and we will have to continue in that direction unless relief comes through increased rates States and interstate."

Mr. Patterson: Now, that is all I wish to read from this. Now, that was May, was it not?

The Clerk: Let me mark that as Exhibit BB.

. . . The instrument last above referred to was received and filed in evidence and marked St. Joe Paper Company's Exhibit BB.

BLEED THROUGH

Mr. Patterson: Now, I have certified copy—I won't take your Honor's time to read from those exhibits. They are very clear. There might be one or two things that I could direct your Honor's attention to, but I can probably do that better otherwise.

I have here a certified copy of the testimony of Mr. Davis, together with exhibits—Exhibit 116 which was filed by him at [421] that time.

Mr. Bourne: Could you start——

Mr. Patterson: This is January 18, 1952, the date on here, and the Exhibit is 116, all in Ex Parte 175.

Mr. Bourne: All right.

Mr. Patterson: On Page 5948, near the top of the page——

Mr. Bourne: I have that one, if you will give me the page as we go along.

Mr. Patterson: All right. Page 5948.

Mr. Bourne: Our pages don't coincide, but never mind.

Mr. Patterson: They don't?

Mr. Bourne: No.

Mr. Patterson: You have his prepared statement?

Mr. Bourne: I have his prepared statement.

Mr. Patterson: I have a copy of that. I don't believe I brought the copy with me, because it wasn't certified, and I didn't think I could use it.

Mr. Bourne: All right, never mind. I will just take notes.

Mr. Patterson: (Reading).

"Coast Line's need for dollars can be exemplified best I think, by the rapid dwindling of Coast Line's——"

Mr. Patterson: Then, he refers to sheet 5 of Exhibit 116, which I will introduce.

(Reading):

[422] "Figures shown as cash balances represent net of cash in banks, also cash invested temporarily in governments less unpaid vouchers in hands of the Treasurer. Those net cash balances do not include remittances in transit or other receivable items, or payable items which have not reached the Treasurer's office, the two, to a considerable extent, being offsetting.

"From Sheet 5 it will be noted that, disregarding variations in some of the individual months, there was from January 1, 1950, through October 31, 1950, an improvement in net cash balances of some $3,800,000.00. But commencing in November, 1950, and continuing through September 1951, there was a steady, though irregular, diminution of net cash balances.

"Such dwindling of Coast Line cash, of course, resulted from revenues having failed to keep pace with expenses.

"In contrast with the build-up in first ten months of 1950 of approximately $3,800,000.00, there occurred a falling-off of approximately $9,200,000.00 in first ten months of 1951.

"Incidentally, there is included in net cash balances, as shown on Sheet 5, four million dollars invested temporarily in government securities."

And then he refers to the East Coast Plan, and says that the amount of cash payment by the Coast Line required by Plan approved and certified by the Commission to the Court is four million dollars.

[423] "It is obvious from Sheet 5 of Exhibit 116 that by the end of September, 1951, Coast Line's net working capital had decreased to an almost alarming level, and therefore measures had to be taken not only to prevent further diminution, but to restore net working capital to a more comfortable level.

BLEED THROUGH

"The only available measure which could possibly be taken was to reduce operating expenses; and, generally speaking, operating expenses can be reduced materially on through curtailment of maintenance expenditures.

"Rather drastic steps to curtail maintenance were therefore taken by Coast Line in last half of September, 1951."

The other testimony related to the operation.

(Reading):

"That curtailment accounts for the improvement in cash since September 30, revenues being responsible to only some seasonal extent.

"In maintenance expenditures, including purchases of material and supplies, drastic reductions became effective on various dates beginning with September 14, 1951, through October 1, 1951, and are continuing."

And then he shows here the number of employees as seven hundred and twelve, and shows net reduction of $1,059,731.00 a month.

(Reading):

"This tabulation contains reductions made to and including [424] October 1, 1951, but does not include other reductions in forces subsequently made, which reductions, however, were not so substantial.

"These reductions in forces were in addition, of course, to reductions in March-April, 1951, when one thousand one hundred and forty-two employees were dropped, and payrolls and payments to contractors reduced to $739,000.00 per month, about which I testified in May 1951.

"All of these reductions in forces have continued and are still in effect."

And then he says:

(Reading):

"To appreciate the sacrifice of progress caused by the reduction of more than a million dollars a month in maintenance expenditures by Coast Line commencing in September 1951, it is necessary to consider the needs of any present day railroad to increase its efficiency"

And, then, he takes up the various things that are necessary as a basis for his further statement as to how much of it he didn't get.

Beginning on Page 5956, Mr. Bourne,—maybe this 11r1 maybe that refers to Page 11. I don't know. I don't know whether that has any reference to it or not. There are some interruptions here. I was trying to find the question. Well, I will start with the answer. Commissioner Aitchison said to go on.

[425] This is at the bottom of page 5956.

(Reading):

"Coast Line has pursued for several years a progressive program of lengthening passing tracks, both on principal main lines and on secondary main lines.

"This passing track program has been curtailed substantially, and for year 1951 fell short of the program set up in early 1951 by nearly $500,000.

"Because of the attrition of cash resources and the resultant enforced curtailment of expenditures, the program set up early in 1951 for improvement and enlargement of freight yard facilities fell short of accomplishment during 1951 by about $1,235,000.

"Coast Line has been engaged in an extensive program of reballasting and of renewing crossties since 1945.

"Those programs in the past have been given high priority on the list of Maintenance Expendi-

BLEED THROUGH

tures, but Coast Line's cash position in 1951 was such that the reballasting and tie renewal programs were materially curtailed. Had the cash been available. Coast Line would have spent approximately $5,476,000 in 1951 for those two programs of needed track maintenance; it was necessary to curtail the 1951 programs by nearly $2,000,000.

"In addition to drastically curtailing the major improvement programs of the type discussed, Coast Line [426] had to go further and materially curtail normal maintenance programs, and which include painting and repairing of both timber and metal structures, chemical treatment of weeds and grasses on rights-of-way and many other items of normal and needed maintenance.

"Coast Line has approximately 20 miles of steel bridges and approximately 41 miles of timbered trestles.

"Normal upkeep, including painting, of the steel bridges on basis of present costs would require annual expenditure of about $760,000. In 1951, Coast Line was able to expend for that purpose only slightly more than $300,000.

"Normal maintenance of timbered trestles would require expenditures of about $600,000 per year on basis of present costs. Coast Line was able to spend only about $100,000 for that purpose in 1951.

"Coast Line spent $161,265 in 1950 for the chemical treatment of weeds and grass on right-of-way, while the program contemplated for 1951 would have required an expenditure of $207,000. That program had to be dropped and nothing was spent in 1951 for chemical eradication of weeds and grass.

"Over-all, there has been contemplated programs for 1951 of improvement and maintenance, including capital expenditures as well as charges to operating expenses in connection with said program including

expenditures estimated at forty [427] six million dollars. There was actually spent on such programs in 1951 only approximately thirty-three million dollars.

"Curtailment of thirteen million dollars had been dictated by failure of increased revenues to keep pace with increased costs of operation, and consequent dissipation of net working capital.

"All of this boils down to the fact that Coast Line desired and intended to spend and should have spent in 1951 at least some thirteen million dollars more for the purpose of increasing efficiency and improving Coast Line's service than was spent.

"Because of failure to obtain needed freight rate increases, money was not available, and the work could not be done."

Mr. Patterson: Then he goes into the subject of Dieselization, and I will skip along, and I will be through pretty quickly, I think. These other figures are all shown in the exhibits.

On page 5965.

(Reading):

"Line 7 of sheet 6 shows dividend requirements, and the question may arise as to why dividends paid in 1951 and estimated for 1952 are larger than were paid in 1950.

"The answer is that Coast Line earned in 1950 the equivalent of $15.51 per share of common stock and paid out [428] the modest proportion of four dollars per share in dividends.

"Early in 1951, the effect of increased expenses upon available cash was not foreseen, and it seemed then to the Board of Directors to be prudent as well as equitable to increase the dividend rate to $1.25 quarterly, or five dollars per share per annum.

"Coast Line's dividend policy has been conservative.

BLEED THROUGH

"In 1946, for example, out of net income of approximately $5,475,000 there was distributed——"

Mr. Patterson: Well, that is all set out in the exhibits more in detail.

Turning back now to page 5959, which follows his statement about the curtailment to the extent of thirteen million dollars.

(Reading):

"Coast Line has complete Dieselization as its goal, recognizing that only through the reduction in transportation expenses which will result from the economy of Diesel power, as compared with steam power, can Coast Line hope to provide the transportation service required at costs which Coast Line can afford to pay.

"Diesel power requires shop and servicing facilities of a different nature entirely from facilities used for steam power. Coast Line contemplated constructing during 1951 major Diesel power servicing facilities at Lakeland, Florida, [429] and Atlanta, Georgia, and lesser facilities at other terminals to involve expenditures of some $500,000. But Coast Line's financial situation has been such that construction of additional Diesel shop and servicing facilities is held in abeyance."

Mr. Patterson: I was trying to find—I don't know whether I can put my hands on it. That covers everything except the number of Diesels that he had on order.

It is right interesting that in the latter part of his opinion, he explains the result of the situation by telling the story of the C. & W. C., whose business increased so, and they bought some Diesels and that wasn't enough and they bought some more, and, finally, he says, that the parent company had to advance some cash to pay the interest on their debt.

He said it repeatedly in here. "It is not more traffic we want. It is dollars, more dollars", and he emphasized the fact that only in that way can the Coast Line get enough money to do what it needs to do.

Now, in this Exhibit 16, I just want to refer generally to two or three points. I particularly would like to refer to Sheet 5, which shows the net cash balance at end of each month of 1951, compared with the corresponding months of 1950.

Now, that shows, from January, 1950, it stayed between thirteen and, say, seventeen million dollars until January, 1951. Then it got to fourteen, twelve, ten, eleven, nine, [430] nine, ten, five, three, five, five, six, and he says that includes the four million dollars which was invested in Government bonds, so, in September, there must have been a deficit.

On Sheet 6, it shows the estimated money that will be needed. Instalment payments on equipment obligations, estimated for 1952. There is an exhibit on one of the others that shows over eight million dollars. Capital expenditures for new equipment, add another $2,129,000 to that. Capital expenditures for roadway and structures, he says he needs ten million dollars, and eleven million dollars if he gets a raise; and then his fund, his sinking fund requirements are increased by reason of the change in the accounting figures of the Commission, which refused to allow them to deduct the amortized figure on equipment and forces them to use only the depreciation allowed by the Commission so far as those accounts are concerned, although they are entitled to deduct the amortized account for tax purposes. And, he says that because of the terms of their mortgage, it will increase some three hundred thousand dollars more, for sinking fund and other reserves.

There is a shortage here. The actual shortage, he says, in 1950, is estimated at $17,948,000. That is

BLEED THROUGH

Item 9 minus Item 13, which does not include, as I—I don't think that includes—that may include the bond issue; the debt [431] that is due.

Decrease in working capital for 1951, he estimates at $7,775,000.

Mr. Bourne: Could I see that, Mr. Patterson, please?

Mr. Patterson: Yes, sir.

. . . Handing paper to the witness.

Mr. Patterson: Will you mark that, please.

. . . The paper last above referred to was received and filed in evidence, and marked St. Joe Paper Company Exhibit CC.

Mr. Patterson: Let me see that May 18th volume, and see if this is a duplicate. I would like to attach this to it. I think that was omitted.

I have here Exhibit AW-3, which was introduced on May 18, 1951. I think that was introduced by Mr. Ormond after his testimony over here.

Mr. Bourne: Have you offered this?

Mr. Patterson: I have offered the other one.

Mr. Bourne: Is that a part of it.

Mr. Patterson: That is another one.

Mr. Bourne: Let us get straightened out on the first one.

Mr. Patterson: All right.

Mr. Bourne: Have the minutes got a number. Have they got a letter, the minutes; the transcript of Mr. Davis' testimony? Has that got a letter?

The Clerk: That is CC, the last one of January 18, 1952.

[432] Mr. Bourne: Does that include the attached exhibit?

The Clerk: Yes, sir.

Mr. Bourne: That is all one exhibit?

The Clerk: Yes, sir.

Mr. Patterson: This is one that I want to put in with his testimony. That was testified to by Mr.

Davis at the May 18th hearing. It is not in my copy that I have here.

Mr. Bourne: Then, there is no exhibit attached to Exhibit CC; is that correct?

The Clerk: I have one here.

Mr. Patterson: Is that May? No, that is January, 1952. This is the one that didn't have the exhibit, for May. I will attach that to this. That is the testimony in the first hearing.

Mr. Bourne: What is that now?

Mr. Patterson: May 18th.

Mr. Bourne: What is this one now—BB?

Mr. Patterson: BB.

Mr. Bourne: It is attached to Exhibit BB.

Mr. Patterson: Yes. Now, that exhibit is made a part of BB.

Mr. Bourne: What became of AA?

Mr. Patterson: This is AA, February 20th.

Mr. Bourne: What is the date of AA?

Mr. Patterson: February 20, 1951.

[433] Mr. Bourne: What?

Mr. Patterson: February 20, 1951.

Mr. Alderman: What is the last number from which you read—November, 1944?

The Clerk: That was marked Y.

Mr. Patterson: I would like to see this file. There is an exhibit here that I want to have marked. It is that call for admissions that I have served on them—a speech by Mr. Davis. There is a little pamphlet attached to it. Here it is. I have it.

Have you got a DD?

The Clerk: No.

Mr. Patterson: If the Court please, we called upon them to admit the genuineness of two documents here, and there was no reply filed, and I understand from Mr. Howell they don't question it.

BLEED THROUGH

Mr. Howell: If the Court please, a reply acceding to the admission was mailed from Richmond on the 15th of January; original to the clerk and a copy to these gentlemen.

Mr. Patterson: That is all right. I beg your pardon. It never came into my hands.

Mr. Bourne: Could I suggest this, Mr. Patterson, that a part of our adoption record includes——

Mr. Patterson: You are going to put that in?

Mr. Bourne: I will put that in.

[434] Mr. Patterson: All right. The other is a speech of Mr. Davis to the—an address of Mr. Davis to the New York Society of Security Analysts, Tuesday, December 18, 1951. I don't know where it was. It doesn't say. It is entitled "An Informal Look at Atlantic Coast Line." It gives a very complete story of the situation from the standpoint of the Atlantic Coast Line, and includes references to many of the facts that I have just read.

Now, I want this marked as an exhibit, please.

The Clerk: That will be DD.

. . . The instrument last above referred to was received and filed in evidence and marked St. Joe Paper Company Exhibit DD.

Mr. Patterson: Now, we would also like to—I don't know—I think this can just as well be stated, with Mr. Howell's and Mr. Bourne's consent. This is answer to interrogatories as to whether you had any contract for the refunding of the bonds that are coming due. This answer was dated January 15, 1952, and at that time the Coast Line stated, in reply to interrogatories, that they had no contract or commitment for the sale or purchase of the new refunding bonds.

Mr. Bourne: Do you want to read the questions and the answers?

Mr. Patterson: No, I don't care anything about it. I just stated what it is.

[435] Mr. Bourne: All right.

Mr. Patterson: That is all that I have, your Honor. That is all for the St. Joe Paper Company.

The Court: All right. Does that conclude all of the testimony of the objector groups?

. . . To which inquiry there was no response.

The Court: Very well. There being no further testimony being proffered on behalf of the objector group, you may now proceed with the testimony on behalf of those who favor the Plan. The Atlantic Coast Line may proceed.

Mr. Bourne: The duPont Trustees said that they were going to have testimony of an hour or an hour and a half.

The Court: I called for it, and there doesn't seem to be any answer.

Mr. Ashby: The last time I heard, they propose to put no testimony in.

The Court: All right. You may proceed.

Mr. Patterson: The witnesses we contemplated putting on are those that we decided not to put on.

The Court: Very well. Proceed.

Now, what is the length of time the testimony will take on direct?

Mr. Bourne: I think not over two hours, at the outside.

The Court: Two hours?

Mr. Bourne: Not over that at the outside. That is for [436] the Atlantic Coast Line. Mr. Crossman, I think, will have something.

Mr. Crossman: I will take an additional hour to that.

The Court: All right. Swear the next witness.

BLEED THROUGH

Louis F. Ormond—Direct.

LOUIS F. ORMOND, having been produced and first duly sworn as a witness in behalf of the Atlantic Coast Line Railroad Company, thereupon testified as follows:

Direct examination by Mr. Bourne:

Q. Will you please state your name? A. Louis F. Ormond.

Q. Will you state your position with the Atlantic Coast Line Railroad Company? A. I am vice-president in charge of the Accounting Department.

Q. How long have you been with the company? A. Since 1937.

Q. How long have you been in railroad work of one kind or another? A. In railroad accounting, well over thirty years.

Q. Prior to your coming with the Atlantic Coast Line, with whom were you? A. With the Interstate Commerce Commission.

Q. In what department? [437] A. The Bureau of Accounts, of the Interstate Commerce Commission.

Q. Did you testify before, at the hearing before Judge Sibley in January, 1949? A. I did.

Q. Did you also testify at the hearings before the Commission in July and August, 1950? A. Yes, I did.

Q. I show you a proposed exhibit, entitled, Florida East Coast Railway Company, Income Available for Fixed Charges and Federal Income Taxes for the Calendar Years 1950 and 1951, Adjusted in Conformity with Principles Adopted by the Interstate Commerce Commission in its Fifth Supplemental Report, and ask you where you got the figures, exclusive of the adjustments? A. The figures shown for the calendar year 1950 were obtained from the Florida East Coast report to the Interstate Commerce Commission for that year, known as Form A.

The figures for the year 1951 were obtained from a statement which was furnished, at my request, by the Chief

Accounting Officer for the Trustees of the Florida East Coast Railway Company.

Q. Well, now, is the same thing true with respect to the amounts involved in the adjustments as distinguished from the decision to make the adjustments? [438] A. Yes.

> Mr. Bourne: I offer that exhibit in evidence.
>
> The Court: Very well. How do you want that marked—your series of exhibits?
>
> Mr. Bourne: One, two, three.
>
> The Court: All right, that will be Exhibit 1.
>
> . . . The document last above referred to was received and filed in evidence and marked Atlantic Coast Line Exhibit No. 1.

By Mr. Bourne:

Q. Mr. Ormond, would you explain the first adjustment which has been made in the—I withdraw that. The figures, I take it, that appear on pages 1 and 2, are the reported figures, except for the adjustments referred to below? A. That is correct.

Q. Would you explain the adjustment in mail, Line 4, for the year—in the year 1950? A. As is shown in Note 1 on Sheet 2 of the exhibit, the figure shown for mail for 1950, on Sheet 1, on Line 4, has been reduced $388,447 below the reported figure because that amount represents back mail pay which was accounted for on the Trustees' books in the last three months of 1950, but actually was applicable to the years 1947, 1948, and 1949. That same adjustment was made by the Commission in its Fifth Supplemental Report.

Q. When the Commission made that adjustment in the Fifth Supplemental Report, did it, or did it not, credit the [439] $388,447 to those three prior years? A. It did.

Q. This same adjustment has been made, has it not, so far as you can remember, in all the exhibits that have been presented here? A. That is right.

Q. With respect to the year 1950? A. That is correct.

BLEED THROUGH

Q. Now, will you explain the adjustment in the maintenance of way and structures, Line 9, referred to in Note 2? A. That adjustment as shown in Note 2, on page 2 of the exhibit represents a reduction in the amount of maintenance of way and structures of $1,009,891 below the reported figure. Now, that $1,009,891 was the difference between $1,528,747 actually charged to operating expenses during the year 1950, in connection with the rail program, and the constructive annual charge of $518,856 used by the Commission in the Fifth Supplemental Report. The adjustment which I have made is $523,638 less than the adjustment which the Commission made; the difference being that at the time of the Commission's report it was working with estimated figures, whereas I have used actual figures.

Incidentally, Mr. Gordon, for the Lynch interests, makes precisely the same adjustment I do, with a difference of one dollar, which was undoubtedly swapping cents.

Q. You made exactly the same adjustment with respect to [440] the difference between the estimated 1950 expenses and the actual 1950 expenses; is that correct? A. That is correct.

Q. But, he did not agree with you in using the constructive annual charge of $518,856; isn't that correct? A. That is correct.

Q. That was the charge used by the Commission? A. Yes, sir.

Q. Now, are those the only adjustments which have been actually made, and which affect the totals in Line 46? A. Those are the only ones that have actually been made in either 1950 or 1951.

Q. And, the subsequent footnotes, or numbers indicating footnotes opposite items in Line 34, on time deposits, miscellaneous items, Line 36, reorganization expenses, Line 43, relate to adjustments which are not actually so made as to affect the totals on the second page; isn't that correct? A. That is correct.

Q. Now, explain the first of those three items; that is to say, first, what Number 3 relates to? A. Well, Number 3, Note 3, as designated on Line 34, both for 1950 and for 1951, designates interest on time deposits and, presumably, in the event of reorganization, the time deposits would cease to exist, and, therefore, interest would cease to exist, and my thought in setting it out separately was, they are items that probably could or should not be [441] considered in estimating the income of the Florida East Coast for the year following reorganization.

Q. Well, the interest on time deposits is now obtained by cash, the deposit of cash which would have to be used to pay off First Mortgage Bonds; is that correct? A. That is correct.

Q. And your theory is that in normalizing for the purposes of determining earning power, after reorganization, you can't expect to receive interest on time deposits which will no longer exist; isn't that correct? A. That is it, exactly.

Q. Now, there is Number 4, opposite the item, reorganization expense? A. Well, I think that item is more or less self-explanatory. If you are going to normalize the income and use it to estimate earning power, you probably should disregard expenditures for reorganization expenses. That would constitute an addition to income there if you eliminate those expenses in each year.

Q. This Item No. 4 pertains to both years, 1950 and 1951, does it not? A. Yes.

Q. Now, the item, Note 5, relates to what? A. That relates to the year 1951 only, and it is on Line 36, where a figure of $158,586 is shown. According to the [442] information secured from the Trustees, of that amount, $153,340 represents interest on an income tax refund received in 1951, but relating to a prior period. And, again, if you are going to normalize income for 1951 for the purpose of projecting earning power, it was my thought that an item of that kind should be excluded.

BLEED THROUGH

Q. Mr. Bickley made the same adjustment in one or more of his exhibits, did he not? A. Yes, sir.

Q. Well, now, does the next paragraph of your comment reconcile the estimate on page 163 of Document 938, and the figure which is to be found on page 2 of your Exhibit Number 1? A. Yes; that is, with respect to the year 1950. The Commission used a figure of $2,711,185 as representing the adjusted earnings of the Florida East Coast for the year 1950. But, by making the adjustment between the actual rail expenditures and the estimated rail expenditures, which the Commission had before them, you reduce that figure to $2,187,547 as shown on the exhibit.

Q. Now, does the next paragraph show the effect of making the adjustments with respect to interest on time deposits and reorganization expenses? A. It does so, again for the year 1950.

Q. And that produces an adjusted income of how much, Mr. [443] Ormond? A. $2,276,007.

Q. That is approximately ninety thousand dollars more than is shown on page 2, is it not? A. In that neighborhood; slightly less than ninety thousand dollars.

Q. And, does the next paragraph show the effect of the adjustments for the year 1951 with respect to interest on time deposits, the interest on the tax refund, and the reorganization expense? A. It does so.

Q. And, that produces an adjusted income of how much? A. $2,357,285, as compared with the reported figure of $2,637,358 shown on Sheet 2 of the statement, Line 46.

[444] Q. Mr. Ormond, isn't there a mistake at the bottom there? A. Bottom of what?

Q. Shouldn't the 30,955 be added instead of subtracted? A. Yes. It says, plus, but it wasn't done.

Q. What is the correct total then? A. $2,419,195.00.

The Court: Where is it, counsel?

Mr. Bourne: That's in the very bottom figure on the last page, $2,419,495.

Mr. Turney: What was that figure?

Mr. Bourne: $2,419,495.00.

The Court: I didn't hear your colloquy over there. What is that makes that change?

Mr. Bourne: 30,955, should be added to the $2,419,000.00 and it was deducted. It's an elimination of the addition.

The Court: Oh, I see. Well, wait a minute, let me check the arithmetic so I can see how it comes out.

Mr. Bourne: 419,195——

The Court: Yes, 419,195.

The Witness: That's what I said.

Mr. Bourne: I misunderstood you.

The Court: It should be 195.

By Mr. Bourne:

Q. Now, in your opinion, what are the——

The Court: Change that, on the original.

[445] Mr. Bourne: Now, what in your opinion are the soundest figures to represent the properly adjusted balances available for interest and Federal Income taxes in the years 1950 and 1951?

A. I think the figures shown on Sheet 3 of this exhibit, represent the soundest figures.

Q. That is $2,276,007.00 for 1950 and $2,419,195.00 for 1951? A. Those are the correct figures.

Q. Now, have you also prepared an exhibit entitled,—or, proposed exhibit entitled "Atlantic Coast Line Railroad Company, income available for fixed charges and Federal income taxes for the calendar years 1950 and 1951, adjusted in conformity with the principals adopted by the Interstate Commerce Commission in its Fifth Supplemental report"? A. Yes.

Q. Was this prepared under your supervision from the records of the Atlantic Coast Line Railroad Company? A. It was.

BLEED THROUGH

Mr. Bourne: We offer it in evidence.
The Court: Let it be filed as Exhibit No. 2.

. . . The instrument last above referred to was received and filed in evidence and marked ACL Exhibit No. 2.

By Mr. Bourne:

Q. Now, do the amounts in Lines 1 to 48 on Pages 1 and 2, correspond to those on the reports the Atlantic Coast Line has [446] filed or will file with the Commission, except for an adjustment relating to the back mail pay and for the elimination of Federal income taxes accruals? A. That is correct.

Q. Now, is the adjustment, relating to the back mail pay in 1950, exactly the same kind as that made in Exhibit 1 with respect to the Florida East Coast Railway? A. It is.

Q. You made no rail adjustment? A. No, sir.

Q. Will you explain why you did not? A. In discussing the possible adjustments of 1950 with respect to the rail program, and here, referring to Atlantic Coast Line, the Commission did not calculate any debit adjustment for that year. And consequently I have not calculated one either.

Neither have I calculated one for 1951.

The Commission pointed out in its report that in 1951 or 1950, rather, the Coast Line had laid more miles of both new rail and relayer than the average over the twenty-nine years from 1929 to 1949.

I assume that that's why they made no debit rail adjustment. Of course, I can't speak for the Commission. I can only surmise. In any event they made none and I followed the same procedure in the preparation of this exhibit.

[447] Q. Well, the only discussion in the Commission's report, with respect to any rail adjustment, was one that was comparatively small in relation to the figures we are dealing with here anyhow? A. Oh, it was a negligible sum in reference to the amount; that year, in '48,-'49, was

$598,773.00, and when you are dealing with the figures of the character of twenty-three million and twenty-seven million it makes very little difference whether you make that adjustment or not.

Q. Have you anything to add to the note, or the comment on the third page with reference to a possible small adjustment of forty-three thousand dollars with respect to interest received from Peninsular and Occidental Steamship Company, or, is that self-explanatory? A. I think that's self-explanatory. It's small in any event.

Q. In your judgment do the figures on Sheet 2, Line 18, income available for fixed charges and income tax, $23,076,006, in 1950 and $27,408,995.00 in 1951, represent properly adjusted income available for fixed charges and Federal income taxes for those years? A. I think it would, except they are on Line 48 rather than Line 18.

Q. I am sorry. What do they average? A. They average—adding them together—if my mathematics [448] are right—about twenty-five million, two hundred and forty-two thousand five hundred dollars.

Q. And what is the relationship between that average for those two years and the Commission's forecast of $12,600,000.00? A. Well, the average of $25,242,500.00 is just very slightly over twice what the Commission forecast for the Atlantic Coast Line, or, $12,600,000.00.

Q. That $12,600,000.00 forecast for the Atlantic Coast Line compares to the Commission's $2,300,000.00 of the Florida East Coast, does it not? A. Yes.

Q. What do you figure the average for the Florida East Coast to be for the years 1950 and '51, taking your figures of $2,276,007.00 for 1950 and $2,419,195.00 for 1951? A. $2,347,601.00.

Q. In other words, in the case of the Florida East Coast, the earnings averaged just forty-seven thousand dollars more than the Commission's forecast and in the case of the Coast Line they averaged slightly more than double? A. They averaged over twelve million six hundred thousand dollars in excess of the forecast.

BLEED THROUGH

Q. Now, there has been some testimony just read into the record this afternoon—no, I withdraw that.

Mr. Bickley, I believe it was, this morning—possibly this afternoon—referred to the fact that the reported balance [449] available for fixed charges, or, perhaps it was the reported net income for the first—for the full year, 1951, seemed extraordinarily large in view of the reported results of the first eleven months. Can you shed any light on that? A. Yes, there were two main reasons.

The first was that in December, we accounted for additional mail pay applicable to the year 1951. We accounted for that in December of that year.

Q. In other words, you took that all in the December income? A. Earnings. We didn't know about it until shortly before that time, because the order of the Commission was not issued, I don't think, until October or November.

Q. You didn't have to credit that to other years because that belonged to 1951, is that right? A. That's right. So, that increased reported earnings for December. The amount of that was about a million, two hundred and seventeen thousand dollars.

Incidentally, the same thing operated in the case of the Florida East Coast.

Q. What was the other factor. You said there were two factors. A. The other factor was the order of the Commission requiring the railroads to take out of operating expenses for 1951, the amounts which they had accrued in the first ten or eleven months of 1951 for amortization of defense facilities [450] under Section 124A of the Internal Revenue Code, and substitute for amortization what the Commission referred to as normal depreciation charges on the same property. That adjustment resulted in some two million three credit to operating expenses in December.

Q. Well, this accelerated depreciation—is that the correct term? A. No, it's just amortization, but it's informally referred to as "accelerated amortization".

Q. The amortization of defense facilities is equivalent to a very high rate of depreciation, isn't that correct? A. That is correct.

Q. And it is done—sought to be done because of the tax advantages of doing it, isn't that correct? Or, at least for one reason? A. Yes. You are permitted under the Internal Revenue Code to write off the cost or a percent of the cost depending on the decision of the regulatory authorities, over a period of five years instead of, perhaps, over a period longer than that, and you get a tax deferment. It reduces your taxes for the moment, but obviously if you have written off the cost of a facility in [451] five years, you have no benefit of depreciation on that after five years, to the extent that it has been written off.

Q. What happened, I take it, was in 1951 the Atlantic Coast Line and other railroads started making these extraordinarily large charges for depreciation, which had the effect of reducing them—reducing their income and then they were ordered by the Commission not to do that for the year, and to restore the difference between the extraordinary one and the normal one, is that correct? A. Yes, that's correct, and that was the normal thing to have done, because we had amortization in World War II and at that time, we were not only permitted, but required to charge it to operating expenses, and the Commission made a complete about-face in regard to this matter and it was one which was not expected by the Railroad.

Q. The part I want to find out if it is correct is, the result of the procedure followed by the Atlantic Coast Line and many other railroads with respect to amortization and of the Commissions subsequent order, was not to affect the earnings of the year—or put it this way—was to reduce the earnings during the early months and restore them in December? A. That's exactly correct.

Q. And those two factors taken together produced a relatively enlarged December or— A. They were the principal factors.

BLEED THROUGH

[452] Q. Now, there has been some comment today, perhaps earlier days, with respect to the Atlantic Coast Line's expenditures for maintenance. Particularly the expenditures for maintenance in the year 1951. Have you prepared an exhibit dealing with that subject? A. Yes, sir, I have.

Q. You have two, as a matter of fact, have you not? A. Yes, sir.

Q. Is the first one entitled "Study of cash maintenance expenses in relation to total operating revenues and total operating expenses, ACLRR Co., FECRY Co. and Southern Region Class I Railroads, years 1943 to 1950, inclusive and first ten months of 1951"? Are the sources of the data on that exhibit, which consists of six sheets, set forth thereon? A. Well, sheet 1 shows that the source of the summary figures shown, are Sheets 2 to 6. Sheets 2 to 6 show detailed calculations and the source of the figures that are shown on Sheets 2 to 6, are the statistics reported by the ICC.

Q. This exhibit was prepared under your supervision? A. Yes, sir.

Mr. Bourne: We offer it in evidence.

A. I better correct that last statement. Sheet 6, which deals with the first ten months of 1951, was prepared from railroad reports. The ICC has not made statements on that period yet.

[453] The Court: Let the exhibit be filed in evidence as Coast Line Exhibit No. 3.

. . . The instrument last above referred to was received and filed in evidence and marked ACL Exhibit No. 3.

By Mr. Bourne:

Q. Will you comment very briefly on Atlantic Coast Line Exhibit No. 3? A. I think it could be considered most intelligently by beginning with Sheet 2.

The Court: Mr. Witness, how long will it take you to explain this sheet?

A. About five minutes, your Honor.

The Court: All right, go ahead.

A. The data on sheet 1 are merely a recapitulation of what appears in averages on the other sheets.

Sheet 2 to 6 relate separately to the calendar years 1943 through 1950 and the first ten months of 1951. And it shows the information separately for the Atlantic Coast Line, Florida East Coast and Southern Region Railroads, Class 1 railroads, excluding Atlantic Coast Line and Florida East Coast.

The data are shown separately for maintenance of way and structures in total, from which are deducted the non-cash items which are detailed in Note 3, and after that deduction a total is produced for cash maintenance of way and structures.

The maintenance of equipment is treated in the same way.

[454] Total railway operating revenues are shown, and the cents per dollar of total railway operating revenues in each year and for each of the other groups of railroads expended, separately, for maintenance of way and structures, for maintenance of equipment and for all cash maintenance, are shown. Beginning at Line 16, the total railway operating expenses are shown from which is deducted the non-cash maintenance items previously dealt with. And then from the residue of railway operating expenses there is computed the cents per dollar for cash maintenance of way and structures, for cash maintenance of equipment and for all cash items. This cents per dollar figure in each year for each of the groups of roads for each type of maintenance, are then carried forward and summarized on Sheet 1 of the Exhibit.

BLEED THROUGH

Mr. Bourne: Can I stop there, your Honor?

The Court: Is that a convenient stopping place?

Mr. Bourne: Yes, sir.

The Court: All right, the Court will stand in recess until tomorrow morning at ten o'clock.

(Witness Ormond temporarily excused.)

. . . And thereupon Court adjourned to be reconvened at 10:00 o'clock in the forenoon, Thursday, February 7, 1952.

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[455] . . . And, at 10:00 o'clock a. m., Thursday, February 7, 1952, Court reconvened pursuant to adjournment of the preceding session and the following further proceedings were had:

The Court: Good morning, Gentlemen

What is it, Mr. Bourne?

Mr. Bourne: Your Honor said yesterday something about a summary of the arguments, and I said that we would be very glad to comply with your Honor's wishes, and I am not entirely clear whether you wanted a typewritten or printed summary prior to the argument or after?

The Court: When you file your brief.

Mr. Bourne: My plan had been to file my brief at the time my argument commences, so I could refer to it. Would it be satisfactory?

The Court: At the conclusion of your argument, so I can have sort of a topical guide to your argument, that is all.

Mr. Bourne: And if that is done as soon as possible after the conclusion, that would be all right?

The Court: All right. Yes.

Mr. Bourne: Mechanically, it might be difficult to

do it during the argument, and get it typed up.

The Court: Oh, yes; that will be all right.

Mr. Bourne: Your Honor asked us to submit data with respect to the value of the Atlantic Coast Line common stock, [456] and I have a little statement here which I will submit.

The Court: Does it differ from the exhibits introduced?

Mr. Bourne: There is no disparity in the figures in there at all.

The Court: All right. You want to file this in the record?

Mr. Bourne: Well, I would like to but I want to call attention, your Honor, to the fact that in the middle of it there are statements about the procedure that is followed by the Stock Exchange and the Securities and Exchange Commission. Now, I am not prepared to prove that technically. I believe that it would be correct, and the belief is based, on actual experience I have had myself.

The Court: Do you think that the method employed by the Bondholders differs from this method?

Mr. Bourne: It doesn't—they have got three—the Stock Exchange and the Securities and Exchange Commission, for this purpose mentioned in this memorandum, use only the last year. They use two kinds of averages made over the twelve months of the last twelve months. Now, our figures come out exactly the same as theirs.

The Court: I see. Well, it is the figures, the prices, the dollar value, I am interested in and not so much the means of computation, so long as it brings us out to the same place. All right. I will put this in the record.

[457] Mr. Bourne: Shall I have this marked as an exhibit, your Honor?

BLEED THROUGH

The Court: You can if you like. I am going to take it along and read it to see what it is.

Mr. Bourne: I will offer it at this point.

. . . The instrument last above referred to was received and filed in evidence and marked ACL's Exhibit No. 4.

Mr. Bourne: I would like to inquire whether it will be stipulated that the earnings per share of common stock of the Atlantic Coast Line, the Seaboard, and the Southern in 1950 and 1951 were as follows:

Atlantic Coast Line, $15.51 in 1950; $15.98 in 1951.

Seaboard, $15.79 in 1950, and $17.93 in 1951.

And Southern, $14.94 in 1950; $12.21 in 1951.

Subject to correction.

Mr. Turney: If the Court please, I have no means of knowing about the Seaboard and Southern, but I will accept the statement of those as approximately the figures.

Mr. Butler: I will do the same.

Mr. Alderman: I think these are all right for Southern.

Mr. Brown: I have no way of checking them at the moment. However, I have no objection to them being received.

Mr. Turney: We want our stipulation subject to correction by the Seaboard.

[458] Mr. Bourne: Your Honor, Mr. Crossman advises he has a witness subject to being called back, and asked me if I would object to interrupting Mr. Ormond's testimony, and I have no objection at all.

The Court: What about that exhibit with respect to shipments?

Mr. Bourne: I have no motion.

The Court: In other words, you will concede that that is properly in evidence?

Mr. Bourne: Yes, sir.

The Court: Very well.

All right. Proceed, Gentlemen.

Mr. WILLIAM G. STOTT, having been produced and first duly sworn as a witness herein, testified as follows:

Direct examination by Mr. Crossman:

Q. Mr. Stott, will you state your name and address, please? A. My name is William G. Stott, S-T-O-T-T.

Q. What is your present employment? A. I am Assistant Vice-President, J. P. Morgan Company, Inc.

Q. How long have you been employed by J. P. Morgan Company, Inc? [459] A. Since I got out of school in 1935.

Q. How long have you been Assistant Vice-President? A. The last year and a half.

Q. Where were you educated? A. Tufts College, Bedford, Massachusetts.

Q. What degree did you get there? A. Bachelor of Science in Mechanical Engineering.

Q. Will you speak a little louder? It is hard— A. Bachelor of Science in Mechanical Engineering.

Q. You graduated in what year? A. 1935.

Q. 1935. What about your experience at J. P. Morgan and Company since your graduation? A. Well, since 1935 I have been a Statistician for J. P. Morgan and Company. Since about 1943, I have been a Senior Statistician of J. P. Morgan and Company, and as a Senior Statistician it has been my job to prepare reports analyzing the revenues, operating statistics, capitalization, earnings, and security values of railroads for our Trust Investment Committees, and also for the bank itself in its work.

Q. Your analyses as I understand it, have been used as a basis for investment action taken? A. Yes, sir.

Q. By these various trust committees of the bank? A. They have been, yes.

[460] Q. And for investment by the bank? A. That is correct.

Q. Itself, for its own account? A. That is correct.

Q. I believe you stated that you have been an Analyst particularly as to railroads? A. Yes, sir.

BLEED THROUGH

Q. During all this period? A. I have been.

Q. What is your position with the committee, Mr. Stott? A. I am acting secretary of the Deposit Committee for the 5% bonds.

Q. Who are the members of that Committee? A. The Chairman is Mr. A. M. Anderson, who is Chairman of the Executive Committee, J. P. Morgan, Inc. The other members are Mr. D. E. Borden, National City Bank of New York; Mr. Henry Sturgis, of the First National Bank of New York, Mr. Harry Hagerty, of Metropolitan Life Insurance Company.

Q. Which of those firms which you have mentioned were originally in the syndicate which sold these bonds to the public? A. The banks.

Q. All three of the banks? A. Yes, sir.

Q. What was the position of the Metropolitan Life? A. It was a large holder of the bonds.

[461] Q. What is the principal amount of bonds on deposit, and number of holders? A. We now have $437,900.00 principal amount of bonds held for 196 depositors.

Q. Do the depositors have the right of withdrawal over their bonds from deposit without the payment of any fee? A. Yes, they would.

Q. How long have they had that right? A. Ever since I have been identified with the Committee, which would be about April '43, and I think they had it for some time before that.

Q. In other words, the expenses of the Committee are to be paid only to the extent that the—they are payable out of the estate of the debtor? A. That is correct.

Q. The Committee members have waived their right to any compensation, have they not? A. They have.

Q. And have never received any compensation? A. Never have.

Q. What, Mr. Stott, was the view of this Committee—what is the view of this Committee as to the value to the

Bondholder whom it represents of the plan No. 4 of the Interstate Commerce Commission as against the St. Joe Paper Company Plan? A. The Deposit Committee feels that the value [462] of the Interstate Commerce Commission Plan is better than the value would likely to be under the St. Joe Plan.

Q. What was the view of the Committee as to similar comparison of the Plan introduced by the Atlantic Coast Line Railroad Company in 1950, as against the St. Joe Plan introduced before the Interstate Commerce Commission at about the same date? A. At that time the Committee felt that the St. Joe Paper Company bond for bond plan provided a better monetary value than the Plan proposed by the Atlantic Coast Line.

Q. Is it the view of the Committee that the improvements which the Interstate Commerce Commission required in the Atlantic Coast Line Plan which are reflected in this Plan No. 4 have more than wiped out that difference? A. Yes, sir; it has.

Q. Did the Committee state its views as to the merits of the Coast Line Plan as against the St. Joe Plan in 1950? A. The Committee stated its view as to the merits of the St. Joe Plan as against the Atlantic Coast Line Plan.

Q. That is what I meant. Did counsel so state before the Interstate Commerce Commission Examiner that the Committee believed that the St. Joe Plan was then a better plan? A. Yes, sir, he did.

Q. Was this matter reviewed at a recent meeting of the Deposit Committee, Mr. Stott? [463] A. Yes, on January 28th, it was reviewed.

Q. And at that meeting, did the Committee authorize you to appear here and state its views, and authorize me to represent it as counsel? A. Yes.

Q. Did you prepare the figures which were before the Deposit Committee upon which they prepared their value— A. Yes, sir.

BLEED THROUGH

Q. As to the relative merits of the Interstate Commerce Commission Plan No. 4 as against the St. Joe Plan? A. Yes, I did.

Q. Mr. Stott, do you know the amount of liens covered by orders of this Court since January 1, 1951? I would like to have you state the orders, the relative orders, and the amounts which appear in the record—I am having Mr. Stott state that subject to checking the record, which I have not had the opportunity to do personally, but I believe they are accurate. A. Well, I think the liens since January 1st 1951 are: Document No. 915, April 3rd, 1951, $454,585.00 for additions and betterments; Document No. 943, September 11, 1951, $888,140, for purchase of equipment; Document No. 946, September 11, 1951, $562,500.00 for hopper cars and $37,200.00 for tracks; Document No. 956, October 3, 1951, $214,500.00, for additions and betterments. The total of those amounts is $2,156,925.00.

Q. That is the amounts, as I understand it, authorized, [464] and you have made no attempt to state the—or to find out the amounts that have been spent under those orders? A. No, sir.

Q. Mr. Stott, have you prepared an exhibit entitled "Cash and securities to be paid for FEC under ICC Plan"? A. Yes, sir: I have.

Q. I wish you would go ahead and explain to the Court—A. Well, under the terms of the Interstate Commerce Commission Plan, the Atlantic Coast Line pays $46,500,000.00 in cash and securities; that is in principal amount and par value of securities for the property of the Florida East Coast, exclusive of any excess cash that may be in the Florida East Coast. The amounts of cash and securities are shown in the first column in Exhibit 1.

Q. That is principal amount of bonds and par value or stated value of stock, Mr. Stott? A. That is correct. In the second column I have estimated the market price of those securities. In the third column I show the estimated market value. The market prices I have used for the

Atlantic Coast Line First Mortgage 3¾% Bonds and the divisional 4¼% Bonds are substantially as stated in the Interstate Commerce Commission report. I have increased the price of the common and preferred stocks to reflect current markets.

Q. Would you like to comment particularly on the value of [465] the preferred stock, Mr. Stott? A. It is my opinion that this is an extremely attractive type of stock. Mr. Bickley testified yesterday that he would just as soon—rather have the common than this participating convertible preferred. There are a number of—or several anyway—railroad participating preferred. There are many convertible preferred stocks. There may be some convertible participating preferred stocks, but I don't know of any. What this stock, to my mind, gives the holder, is every advantage of a common stock, plus practically every advantage of the preferred stock. The stock is, in fact, a permanent call on Atlantic Coast Line common.

Q. What is a "call", Mr. Stott, in legal—and maybe more legal language? Is it an option to purchase? A. It is an option to purchase stock.

Q. And it can be used and turned in for the purchase price of your common stock, as I understand it? A. That is correct.

Q. No additional consideration need be paid by the holder of the preferred to convert it into common stock? A. That is correct.

Q. And am I not correct in my belief that that preferred stock may be converted into common stock at the rate of one and one-quarter shares of common, if the preferred were to be called for redemption? [466] A. That is correct.

Q. At any time? A. That is correct.

Q. Now, will you explain a little more the value of this call? A. Well, a call on a security market is something that is traded quite actively by call—they are put and call brokers. Quite generally, I would say, that a six months call costs about ten percent in excess of the market. In

BLEED THROUGH

other words, in the case of Atlantic Coast Line, a six months call would cost about eight points per share of common. As a matter of fact, I checked with one of the local banks yesterday, and asked them to get a quote on a call for me there, and they told me that a call for 100 shares of Atlantic Coast Line common for six months would cost eight hundred dollars.

Q. Well, if that is correct, it would appear that you have maybe undervalued this preferred stock? A. I think it is possible.

Q. Would 88 be nearer right? A. It might be.

Q. It is your understanding—I want to be quite clear because I am not sure that Mr. Bickley was entirely clear, at least in part of his testimony as to the features of this preferred stock. As I understand it, that this preferred stock has a preference as to dividends as to four dollars a share? [467] A. That is correct.

Q. Before the common? A. That is right.

Q. It has a right on liquidation to be paid one hundred dollars before the common gets anything? A. That is correct.

Q. It has a right to receive in dividends as much as the common stock gets? In other words, if the common stock gets paid four dollars, the preferred gets four dollars anyway? A. The preferred would get four dollars before the common got any dividend, or could get four dollars.

Q. If the common gets five dollars, what does the preferred get? A. Five dollars.

Q. And the common ten dollars? A. The preferred, ten dollars.

Q. Will you proceed? A. I think I have about covered that last exhibit—that first exhibit—other than to say by way of summary that on the basis of my estimates, this Atlantic Coast Line package of cash and securities would be worth about forty million five hundred thousand dollars under present market conditions.

Q. I would just like to go at the common stock again just a minute. It was testified here yesterday that the Atlantic Coast Line Railroad Company holds one share of Louisville [468] and Nashville for every share presently outstanding of Atlantic Coast Line common? A. It does.

Q. What is the market value of the Louisville and Nashville stock? A. Well, I am not sure this morning, but a day or so ago it was $53.00 to $54.00 a share.

Q. Is that a rather stable market value? A. Well, the L & N is a coal railroad, which is much more stable than the average railroad; and the price of L & N common stock has been more stable than the average railroad common stock.

Q. If you deduct $53.00 a share for L & N stock, from $80.00 a share estimated market price for the Atlantic Coast Line, what is the difference? A. Well, it would be $27.00. Which, I suppose you might say would be the mean price at which the Coast Line earnings are selling for. The Coast Line earnings alone.

Now, the Coast Line earnings ex the L & N Earnings would be twelve dollars a share, roughly, because the L & N pays a four dollar dividend to the Coast Line which is reflected in the sixteen dollars a share earnings of the Atlantic Coast Line in 1951.

Q. If the L & N were to pay their entire, or practically their entire earnings available for dividends, up to Coast [469] Line, as Mr. Bickley suggested yesterday, the Florida East Coast might do, pay out all of their earnings in dividends, what would be the amount, approximately of the Coast Line earnings? A. In 1951, the L & N earned $9.74 a share. I may be a few cents out, but I think that's what it was.

If the L & N had paid its full dividends, it could have paid $5.74 a share more to the Coast Line, which would increase the Coast Line's earnings from sixteen dollars by not more than $5.74, because there would be an income tax on that dividend, moving across. A small income tax, about 8%.

BLEED THROUGH

I think you could say the Coast Line real earnings, including its equity in L & N Earnings, are somewhere around twenty-one dollars a share.

Q. It has been indicated in the course of this proceedings, (1) that the Coast Line holdings of L & N was in some way an element of weakness, and (2) I believe in some of the briefs it has been indicated, the fact that the stock was not pledged was an element of weakness. Would you comment on those two suggestions? A. Well, I would consider the ownership of L & N an element of strength, and the fact the stock is not pledged, an additional element of strength.

To the extent that the stock is not pledged, it always could be, if necessary, in order to raise money to take care of [470] any needs. I don't think that the Coast Line has any intention of either pledging or selling that stock.

Q. Mr. Stott, what does the Interstate Commerce Commission find the aggregate value of the securities, which could be issued under an internal reorganization plan to be? A. The Interstate Commerce Commission, largely on the basis of testimony by a witness for the St. Joe Paper Company, found that the aggregate value of the securities that could be issued under an internal reorganization plan, would be only about twenty-six million dollars. That's on Page 211 of Document 938.

Q. Now, that compares with the estimated market value that you stated, of the Atlantic Coast Line package of forty million, five hundred thousand dollars? A. Yes, it does.

Q. And gives no consideration to what we have referred to here as "excess cash" that might be payable? A. No.

Mr. Crossman: I would like to offer that exhibit in evidence as Committee's Exhibit No. 1.

The Court: Very well.

. . . The instrument last above referred to was received and filed in evidence and marked Committee's Exhibit No. 1.

[471] By Mr. Crossman:

Q. Have you prepared another paper entitled "Atlantic Coast Line cash and securities distributable to the Florida East Coast refunding bonds, under the Interstate Commerce Commission Plan"? A. Yes, sir, I have.

Q. Would you be kind enough to explain the basis of your calculations in that exhibit? A. Well, the first column in this exhibit is very similar to the first column in the last exhibit. The only difference is that under the Interstate Commerce Commission Plan, the unsecured creditors will be satisfied out of the First Mortgage three and three-quarter percent bonds and the common stock would be paid by Atlantic Coast Line Railroad for the property.

Q. And what has the Commission found as the amount of the unsecured claims? A. The Commission has found the amount of the unsecured claims to be $2,535,907.00.

Q. And what amount of those unsecured claims have been purchased and pledged for the benefit of the First and Refunding Bondholders? A. $487,418.00, or a little over 19%.

Q. And what is the principal amount of First Mortgage Bonds payable to those unsecured claims—strike that, please. What is the value of the mortgaged assets, or free assets, as found by the Interstate Commerce Commission? [472] A. $1,177,356.00.

Q. Now, how does the Interstate Commerce Commission allocate that value to the unsecured creditors under the Interstate Commerce Commission Fourth Plan? A. It allocates 50% of that value, or $588,700.00, principal amount in new Atlantic Coast Line divisional First Mortgage Bonds, and $353,200.00, par value of Atlantic Coast Line common stock.

The $353,000.00 par value of Atlantic Coast Line common stock is 60% of the remaining 50% of the claim.

Q. The remaining 50% of the value of the mortgaged assets, is that correct? A. That's correct.

BLEED THROUGH

Q. Well, I think you have laid your basis for explaining to the judge, the arithmetical computation that you went through in arriving at these figures in column one. A. Well, the total of the unsecured claims is to be settled for $588,700.00, principal of new divisional First Mortgage bonds and $353,000.00 par value of Atlantic Coast Line common stock.

Since the Bondholders own a little over 19% of these amounts, however, only 81%—about 81% of the respective amounts, or approximately four hundred eighty thousand principal amount of bonds and two hundred and eighty thousand par amount of common, would be distributed to settle the claims to other than the refunding bondholders.

[473] Those are the amounts that I have deducted from the First Mortgage and common stock.

Q. Now, if there were to be some of these unsecured claims, for instance, held by the Atlantic Coast Line in the amount of $1,900,000.00, to be subordinated, as some of the parties claim they should be, would not that increase, substantially—would reduce substantially the amount you have deducted for unsecured claims? A. Well, it would be a question of how substantial.

Q. The amount to be deducted? A. I don't know.

Q. How substantial? A. Yes, sir.

Q. Would you, Mr. Stott,—or, also, Mr. Stott, if a deficiency judgment should be awarded here to the Bondholders for unpaid interest, would not that rank as an unsecured claim and tend to increase distribution to the Bondholders? A. Yes, sir.

Q. Have you any further comments on this exhibit? I guess you better go through the rest of the columns. A. I would like just to say that the columns showing for one thousand dollars of Refunding Bonds, it is simply dividing the first column by forty-five thousand Refunding Bonds, and I have applied the same prices as in the first exhibit, to that package, and come out with an estimated present market value for [474] the cash and securities distributable

by the Atlantic Coast Line under the Interstate Commerce Commission plan.—per one thousand dollar Florida East Coast Refunding Bond of $885.88.

Q. Now, that is without any consideration of excess cash, which we will go into later? A. That is correct.

Q. It was stated by Mr. Bickley yesterday that it was impossible to tell how many securities would be issued, or what they would be worth. I take it by this exhibit, you disagree with that statement? A. Yes.

Q. You believe that it is possible, within limits? A. Within limits, I think it's possible, yes, sir.

Q. Do you think that the amounts stated in the first column, are probably a minimum? A. Yes, I would think so.

Mr. Crossman: I offer the paper in evidence as Committee's Exhibit 2.

The Court: Let it be received.

. . . The instrument last above referred to was received and filed in evidence and marked Committee's Exhibit No. 2.

By Mr. Crossman:

Q. Now, Mr. Stott, will you kindly explain your understanding of the St. Joe Paper Company's present proposal? [475] A. Well, as I understand the St. Joe Paper Company present proposal, it involves the dismissal of the present proceeding and the transfer of the Debtor's property to equity receivership, whereupon the properties would be sold at foreclosure, against issuance of twenty million of Florida East Coast 4% fifty year bonds, and two hundred and fifty thousand shares of Florida East Coast common stock. That is, one hundred dollar par value, and equivalent to twenty-five million, making the total amount forty-five million.

Q. Is that the package of stock and bonds and cash which the commission valued at approximately twenty-six million dollars? A. Well, it was a similar package and not that package.

BLEED THROUGH

Q. Mr. Stott, under the Plan that the St. Joe Paper Company filed before the Interstate Commerce Commission as I remember it, there was a provision that the present First Mortgage of the Florida East Coast would be paid, principal and interest at consummation date of Plan. Is that correct? A. That's my recollection.

Q. Under the Plan which they propose to put through in equity receivership, what would happen to that old First Mortgage issue? A. Well, under the terms of this Plan, the bonds would not be paid off, I imagine, because they could not be—although, I am not sure.

Q. The Plan does not provide for that? A. The Plan does not provide for the payment of the bonds.

[476] Q. What does it provide? A. It provides, instead, for setting up a trust fund to be invested in cash or government bonds, of $8,189,000.00, principal amount of the bonds.

Q. That is the only—that is only the principal amount of them? A. Well, I assume they don't intend to put the interest in.

Q. Is there any chance they are going to put up interest until maturity? A. No, I don't think so.

Q. What is the date of maturity? A. June 1, 1959.

Q. What would be the amount of that interest, if they put it up as of today? A. It would be about $2,600,000.00.

Q. Do you know of any way of getting satisfaction of that mortgage without putting up principal and interest? A. Well, I don't. I don't know whether I am competent to answer that. I don't know of any way.

Q. Do you believe that those bonds that St. Joe Paper Company proposes to issue, could be called First Mortgage Bonds? A. Oh, no, they certainly couldn't.

Q. They would be second Mortgage Bonds until the old issue is out of the way? [477] A. Yes, sir.

Q. Either principal and interest put up or paid off, or what-not? A. Yes.

Q. In your judgment, is that an important factor in valuing the St. Joe Bonds? A. Oh, yes, sir.

Q. And when the Interstate Commerce Commission valued the St. Joe bonds, they were considering them as First Mortgage bonds? A. Yes, sir.

Q. The features of that Plan would provide for that satisfaction? A. Yes, that's right.

Q. Have you prepared an exhibit entitled "Florida East Coast Railway Company pro-forma earnings on basis of St. Joe Plan capitalization"? A. Yes, I have.

Q. Would you be kind enough to explain that exhibit? A. Well, in this exhibit I have attempted to show what the earnings of the Florida East Coast would be under the St. Joe Plan, at the levels of earnings as adjusted by the Interstate Commerce Commission for the years 1947, '8, '9, and '50, and in '51, on the basis of my estimate of the earnings for that year, which I gather, now, was just about what the railroad will re- [478] port, plus the figures on the basis of the Interstate Commerce Commission's estimates of normal earnings.

The first figure in this exhibit is income available for fixed charges before income taxes.

And also, since 1947, the basis of these figures, is varied between the two million and two million, seven.

The next figure is my estimate of the fixed charges of Florida East Coast including the additional cost of carrying the $8,189,000.00 of first mortgage bonds.

Now, what I have assumed there, is, that the Florida East Coast would be able to purchase government bonds that would provide a two and a half percent return, so that the only cost of carrying those bonds would be 2%.

That follows a figure there, for insurance, interest on equipment trust, 2%, interest on the First Mortgage Bonds at 4% on the twenty million of new bonds that would be issued. A total of $1,085,000.00, approximately. Deducting that from the income available for fixed charges before income taxes, we find the taxable income below.

BLEED THROUGH

I have applied tax rates—taxes at various rates, which, in effect, were the corporate rates applicable to the years that I have used——

Q. Actual? A. Actual, yes. Then, we find the net income of the road, after payment of fixed charges and income taxes.

[479] I show the coverage of fixed charges in each year, both before and after income taxes and the earnings per common share which is after all charges and income taxes.

Q. If the earnings—income available for fixed charges—should be three million dollars as predicted by Mr. Gordon, what would your figures for fixed charge coverage before income tax, fixed charge coverage after income tax and earnings per common share be? A. As a matter of fact, when I prepared the memorandum for the Committee, I thought that the earnings of the Florida East Coast in '51, would probably be around two million, six, to two million, seven, but I realized that December '51, was an extraordinary railroad month, in view of the back mail pay and amortization adjustments, and also in view of the fact it's a big net for the Florida East Coast. So I thought their earnings in '51 might reach three million income available for fixed charges and income taxes, so that I had used that figure in the memorandum presented to the Committee. On the basis of these earnings—fixed charge coverage before income taxes for '51, would have been 2.75 times.

After income tax it would have been 1.89 times.

And earnings per share would have been $3.82.

Q. That $3.82 is approximately the same as the earnings per share in 1950? A. Yes.

[480] Q. In other words, a slightly smaller amount, based on a slightly smaller amount available for fixed charges. What is the reason for that? A. The principal reason is tax rates went up sharply between '50 and '51.

Q. Mr. Stott, on the basis of your experience and the basis of figures that you have introduced here, and your general knowledge and the realization that this St. Joe

bond, as far as we know, can't be a First Mortgage bond for seven years, what in your opinion, is the value of that bond, per thousand dollars? A. On the basis of the foregoing earnings, the Committee feels, and I agree, that the new Mortgage Bond would be unlikely to sell for more than 85 to 90, at best, under present market conditions.

And the common would be unlikely to sell for more than twenty-five.

Q. In your judgment, would it make much difference whether earnings were three million or two million, six hundred and fifty thousand? A. Oh, it would make a little difference.

Q. The three million wouldn't bring it above the top figure which you stated? Ninety, on the bonds? A. Well, I shouldn't think so.

Q. Have you any further comments on that paper, Mr. Stott? [481] A. No, sir, I don't.

> Mr. Crossman: I would like to offer that in evidence as Committee's Exhibit No. 3.
>
> The Court: Very well.
>
> . . . The instrument last above referred to was received and filed in evidence and marked Committee's Exhibit No. 3.

By Mr. Crossman:

Q. Mr. Stott, have you prepared a sheet with two headings on it, "Bond comparisons and common stock comparisons"? A. Yes, sir, I have.

Q. Would you go ahead and explain what you have done here, and why? A. Yes. To make this comparison mean something, I would like to make a few comments.

In regard to the part headed "Bond comparison," I would like to say that railroad statisticians take many things into account in valuing a bond. But, two of the most important are so-called carry-through——

BLEED THROUGH

Q. What do you mean by "carry-through"? A. The carry-through is a simple statistical arrangement. It is the amount of income earned, available for fixed charges and income tax.

Q. And, the percentage—— A. Well, I haven't finished. Divided by the gross revenues of the railroad. In other words, if the Florida East Coast [482] had had three million income available for fixed charges and income tax, and had gross revenues of thirty million dollars, it would have had a carry-through of ten percent. As a matter of fact, it didn't do quite that well.

Q. In other words, you would have carried through ten percent of the gross earnings to an amount that would be available for fixed charges and federal income taxes? A. That is correct.

Q. Go ahead. A. Now, by way of illustration, if another road had six million available for fixed charges and income taxes, on gross revenues of thirty million, its carry-through would have been twenty percent. Twice as much. This carry-through is really a margin of safety. What it shows, and the assumption that operating expenses could not be reduced, that the gross revenues of the road would decline to that amount before earnings would disappear, so naturally the one with the higher carry-through would be the safer road, all things being equal. One of the important things is the coverage which measures the cost of railroad fixed charges.

Q. Explain what you mean by "coverage". A. Well, I mean that the number of times the fixed charges are earned, either before or after income taxes.

It doesn't matter much, so long as you know which one you are talking about.

[483] Q. Can you imagine a person buying a bond without knowing the historical background of what the coverage had been? A. No, sir.

Q. And probably without some estimate as to what it would be for the future? A. It's a guess.

Q. Go ahead. A. To explain coverage a little more, with this Coast Line illustration, if the Florida East Coast had earned three million available for fixed charges, and income taxes, and had fixed charges of a million dollars, it would have covered its charges before income taxes, three times. After the income taxes, I have given you a figure from an early exhibit, and it would be 1.9 times.

As you will see, from looking at coverage on one hand and carry-through on another, you can get a rough idea of the value of the railroad and railroad bonds.

Now, if you will look at the last exhibit, that is—you will see under "bond comparison", that in 1951 the Florida East Coast had a carry-through of 9% and earned its fixed charges before income taxes, 2.4 times. And, after income taxes 1.7 times.

If you will look at the bonds, below it, the St. Louis and San Francisco Railroad Company bonds, which is a reorganized railroad long term first mortgage bond, in a rapidly growing [484] territory like Florida, the southwest, you will see that the St. Louis and San Francisco carried 15% of its gross, through, available for charges and taxes. More than 50% more than the Florida East Coast, and covered its charges either before or after income taxes by better than twice as wide a margin.

The St. Louis and San Francisco bonds, therefore, to me, appear to be clearly better bonds than the new Florida East Coast—the proposed Florida East Coast bonds would be. And they sell for 95. .

The real question is how much less than that, the Florida East Coast bonds would sell for. In order to try to determine that, I have made comparisons with several other railroads.

I think that any of those comparisons indicate that the bonds that I have used would be slightly better bonds than Florida East Coast Bonds. And, for 4% bonds, they sell in the middle 80's.

BLEED THROUGH

Pittsburg and West Virginia Bonds, that is a 4½% bond and sells at 93, but, if it were a 4% bond, it also would sell in the middle 80's.

Q. You are inclined to 85, rather than 90, as far as the fair price for these St. Joe Bonds? A. I would think that's a reasonable guess.

Q. I think it is only fair to say that you consider it an informed guess? A. Yes.

[485] Q. Will you discuss the common stock comparison part of the exhibit? A. Well, the evaluation of a railroad common stock is much less complicated than the value of a bond, but, subject to a greater margin of error.

Railroad stocks sell, for the most part, on a per earnings ratio. That is, if a railroad earned five dollars a share and sold for thirty, it would be said to be selling for six times earnings.

At the present time, railroad stocks, almost without exception, sell somewhere between five and nine times earnings.

Q. Generally speaking, what would you say would be the class that would be the exception? A. You mean——

Q. What type of railroad? A. Well, I think the coal—the southern coal roads would sell for a little more than 9 times earnings.

Q. Such as L & N? A. The L & N doesn't. As a matter of fact, it's hard to find many railroads that sell for more than 9 times earnings.

Q. What about Northern Pacific? A. The Northern Pacific sells for more than 9 times earnings, but it has discovered what is believed to be one of the biggest potential oil fields—potentially biggest oil field that has been discovered on its land. The oil hasn't yet been [486] discovered. Excuse me. I don't mean to imply that. But, the potential is there, so the stock is selling a little over 9 times earnings.

Q. Go ahead, Mr. Scott. Explain it. A. Well, the spread —the price earnings ratio does vary within limits with a

number of things. Such as dividend rate and quality of the earnings and the gross of the railroad. But in my opinion, the Florida East Coast common, on the basis of the St. Joe Paper Company plan, would have earned, only, say a little over three times a share in 1951, and I would think that it wouldn't sell for more than six to seven times earnings, or, 18 to 31 dollars a share, unless it paid a very substantial dividend. If it were to pay large dividends, say $2.50 a share, out of those three dollar earnings, it might well sell for twenty-five, or even possibly a little higher.

Q. That is the stock that was testified yesterday was worth one hundred dollars a share? A. Yes.

Q. Have you—do you know the dividends that were paid on stocks listed under—in 1951, under the stocks listed on your sheet? A. Well, the Great Northern, 1950—starting——

Q. Wait a minute, you don't have the Great Northern on there. A. The bottom line.

[487] Q. Oh, I beg your pardon. A. The Great Northern in 1951 earned $7.74. I believe the dividend was four dollars, which would be a little over fifty percent of earnings.

Union Pacific earned $14.50. I believe the dividend was six dollars.

Atchison, Topeka and Santa Fe earned $13.84. That dividend is a little hard to figure because of splits and so on, but it was either four and a quarter or four and a half. A very low percentage——

Q. Less than fifty percent paid out? A. Less than fifty percent paid out. The Pittsburgh and West Virginia earned $2.50, and paid a dividend of two dollars, an extremely high payment.

Q. That is a coal railroad? A. That is a coal railroad with extremely high pay-out, and sells for 9.2 times earnings.

Q. Do the coal railroads pay out a larger percent of dividends than other railroads? A. Yes, as a general rule.

BLEED THROUGH

Q. Why is that? A. As a general rule they have been somewhat more stable in the past and have a custom of paying high dividends.

Q. What about the others? A. The Chicago Great Western paid no dividends in 1951.

[488] The St. Louis and San Francisco, it's very hard to say, because some of the income bonds were just converted, and it is—it will have an effect on the dividend rate. I think the dividend rate probably will be about two dollars. And, it may be less.

Q. Well, in view of your testimony would you say that we are forced to the conclusion—you said your conclusion was, the package of securties and cash distributable to the bondholders under the Coast Line Plan, without consideration of excess cash, was greater than the—per thousand dollar bonds, than the package of one thousand dollar Florida East Coast bonds, distributed under the St. Joe Plan? A. Well, under the Interstate Commerce Commission Plan I have calculated the value of the package at $885.00.

Under the St. Joe Plan I calculated it between—somewhere between $850.00 and $900.00. I think it would be difficult to say that there was much difference between the value of the two bonds. That, of course, is bond for bond package under the St. Joe package. Not a pro rata.

Q. Under their agreement to take only stock? A. That is right.

Q. Now, Mr. Stott, have you prepared another paper in which you deal——

The Court: Well, you say the duPont Plan isn't any better; would you say the Atlantic Coast Line Plan is any [489] better? Now is a good time to answer that question.

A. Yes, I think it is.

Mr. Crossman: I didn't understand that, your Honor.

The Court: Better than the St. Joe Plan?
Mr. Crossman: You understood that?

A. Yes, sir.

By Mr. Crossman:

Q. Have you prepared another paper about this somewhat troublesome question of distribution of the excess cash? A. Yes, I have.

Q. Well, will you—headed "Calculations, excess cash, Interstate Commerce Commission Plan and St. Joe Paper Company proposal"? A. It is.

Q. Would you be kind enough to explain how you got at that or prepared that? A. Well, as I read the two Plans and go through accounts numbered in each of the plans, it is my conclusion that the approximate adjusted net current assets, which is really the figure we would begin with to distribute the cash from, would be the same under both Plans.

In other words, the same assets and liabilities accounts are involved in both plans.

I have estimated that figure at twenty-three million dollars. I am not sure that the twenty-three million dollars is [490] right. I think it's approximately right on the basis of the Florida East Coast Railway Company balance sheet which I have just seen.

Q. As of what date? A. At December 31, 1951. But at any rate, the amounts would be the same under both starting amounts.

Q. You start with the same amount under each Plan. It doesn't make any serious difference if you are off several hundred thousand dollars? A. That is right. Both Plans have certain deductions and reserves. But the most important one, of course, is the payment of the principal amount of the First Mortgage Bonds that remain outstanding, $8,189,000.00. I have shown that and that would be the same in both Plans.

BLEED THROUGH

In regard to working capital, there is a difference. The Atlantic Coast Line—under the Interstate Commerce Commission Plan, it provides for only a million dollars of working capital and the St. Joe Plan for three million, five of working capital.

With regard to materials and supplies, I don't think there would be any difference. The Interstate Commerce Commission Plan provides for two million, six, and the St. Joe Plan makes no specific provision, but I don't think that there is any reason to suppose it would be different, and in fact, Mr. Gordon testified that it should be somewhere between two million five and two million, seven, under the independent Plan.

[491] Now, the big difference between the two is in the reserves for stations.

The Interstate Commerce Commission Plan sets up a three million reserve for stations. There is no such reserve in the St. Joe Plan.

Reorganization expenses, the Interstate Commerce Commission Plan sets up a reserve of eight hundred thousand.

There is no specific reserve in St. Joe Plan, but again, the amounts should be even.

The St. Joe Plan, moreover, provides for the payment of unsecured creditors in cash.

Q. That's different from the Interstate Commerce Commission Plan, which as you have explained, provides for payment of unsecured creditors in First Mortgage Bonds and Stock? A. That is correct.

Q. You have taken that out of the package value, therefore, in the case of the Interstate Commerce Commission plan? A. That's right.

Q. You must make a similar deduction to make the two comparable here, on the cash? A. That's right. As, in the case of the Interstate Commerce Commission Plan, I have deducted 81%—about 81% of the total amount of the free assets, since the First and Refunding Bondholders hold a little over 19%.

Q. The same method, in effect, except you applied it to [492] cash instead of securities? A. That's it.

Q. And, of course, the same comment that you made, would work in reverse on this deduction, as the similar comment you made as to the Commission plan if the amount of the unsecured claims were to be reduced? This deduction would be less? A. Yes, sir.

Q. If the amount of the deficiency judgment were increased, this amount would be less, just as the amount of the securities would be affected under the other plan? A. Well, the same methods would apply in this plan in regards to that.

Q. Now, Mr. Stott, are there any other factors of the Interstate Commerce Commission Plan which, in your judgment, make that Plan more favorable than the proposal of the St. Joe Paper Company? A. Well, in the first place, I believe that the reserve for stations is a different—its an important difference, and the elimination of reserves for stations in the St. Joe Plan in no way affects the need for building such. If a station needs to be built, it will need to be built under the St. Joe Plan or under the Interstate Commerce Commission, Plan, and it seems that on the record, the need for stations is quite clear. To the extent that money must be paid for years, therefore, it might have to be provided under the St. Joe Plan by the ex- [493] penditure of cash that would otherwise go to the bondholders.

Q. That is, if the station is to be built before reorganization is completed? A. That's correct. If the stations were constructed after that, they might have to be financed through the issuance of additional bonds.

Q. Well, they have to be, if they pay out all earnings in dividends, as Mr. Bickley indicated yesterday? A. Yes, sir.

Q. Unless they used working capital? A. Yes. And if they sold additional bonds, I think that would further affect the four stations. That would further affect the market of those bonds. Because, the stations are not an earning asset.

BLEED THROUGH

Q. The stations are not an earning asset? A. That's right.

Q. Is there any other factor you want to comment on in comparing the two Plans, Mr. Stott? A. Well, the second thing is the Interstate Commerce Commission Plan also provides the refunding Bondholders may receive, pro rata, the proceeds of sale of parts of the Peninsular and Occidental tracts in Miami, and certain Hialeah real estate. These properties have been appraised at three million, and certainly the amount not needed for railroad purposes could be sold for a fairly substantial amount.

[494] Q. And under the Interstate Commerce Commission Plan, that amount would be distributable to the Bondholders? A. Yes, sir.

Q. Under the St. Joe Plan, no such provision? A. No.

Q. Is there a further factor you would like to comment on? A. Yes, the final factor, which I consider a very important one, is this provision with respect to lien orders subsequent to January 1, 1951.

These Court imposed lien orders protect the refunding bondholders against a decline in excess cash that would be distributable to them.

Q. Explain why they do that under the Interstate Commerce Commission Plan? A. Well, under the Interstate Commerce Commission Plan, the Atlantic Coast Line would have to satisfy those lien orders. Presumably pay for them in cash.

Q. What happens under the St. Joe Plan? A. Under the St. Joe Plan the cash would simply decline and some other property would take its place.

Q. There is no source of funds in St. Joe, to pay the liens in cash? A. That's true.

Q. The money has gone into the property? A. Yes, sir.

[495] Q. In your judgment, would you rather have the cash or the increased property? A. I would certainly rather have the cash if I were thinking of taking the bonds.

Mr. Crossman: Now, I would like your Honor to offer that as Committee's Exhibit No. 5.

. . . The instrument last above referred to was received and filed in evidence and marked Committee's Exhibit No. 5.

Mr. Crossman: I would like to offer No. 4 also, if your Honor please.

The Court: All right, they will be received.

. . . The instrument last above referred to was received and filed in evidence and marked Committee's Exhibit No. 4.

By Mr. Crossman:

Q. Have you prepared a simple exhibit, or similar exhibit summarizing what you just testified to, Mr. Stott? A. Yes, I have.

Q. How is that headed? A. "Estimated overall market value per one thousand dollar Florida East Coast Refunding 5% Bonds after satisfaction of unsecured claims as provided in the Plan".

Q. I don't believe any comment is needed on that. A. No. That just addes up the amounts I have stated.

Q. It speaks for itself? A. Yes.

[496] Mr. Crossman: We offer that as Committee's Exhibit No. 6.

The Court: It may be received.

. . . The instrument last above referred to was received and filed in evidence and marked Committee's Exhibit No. 6.

Mr. Crossman:

Q. Have you prepared a sheet headed "Earnings Ratio and Dividend Yields", Mr. Stott? A. Yes, sir, I have. As a matter of fact, this is essentially the exhibit that Mr. Bickley put in yesterday. When he put in the exhibit, however, he showed where the Moody's twenty-five railroad

BLEED THROUGH

stocks—he showed there only the price earnings ratio, which is the third column shown in the exhibit, and for the Atlantic Coast Line he showed the same thing. Only the price earnings ratio.

As I have previously indicated, those price earnings—this price earnings ratio is made of two factors. Price and earnings. And, railroad earnings have been inclined, at certain periods, for many reasons, to be rather volatile. One of these periods was at the end of the War. There were many reasons for this.

As a matter of fact, the war time amortization was written off in one year, and shortly after the end of the war, railroad wages were increased very sharply and other costs went up very sharply and rates were very, very slow to be raised, so that railroad earnings between 1943 and 1946, on the basis of [497] the Moody's twenty-five railroad stock average, fell from around eight dollars a share to two dollars a share.

The point that is important is that 1945 and 1946, railroad earnings were not really typical railroad earnings. They were in a state of flux; at that time price earnings ratios of 17 times for the—or, 17 times for Moody's twenty-five railroads and ten times for the Atlantic Coast Line, were quite meaningless.

As a matter of fact, the only reason the Atlantic Coast Line price earnings ratio didn't go up more than it did, is that its earnings didn't decline as fast as you will see from the statement.

I think, therefore, that the years, '40—oh, '44—well, at least '45 and '46 should be disregarded from the standpoint of price earnings ratio. And, if you do that, you will see that never, since 1941, have railroad stocks sold on an average for anything more than nine times earnings.

There is one other very interesting thing that shows up in this statement, and that is that in 1940 the Moody's twenty-five railroad stocks average, earned $1.98 a share. The Atlantic Coast Line earned 2.21 per share.

In 1950 Moody's stock average earned $7.20 a share. The Atlantic Coast Line earned $15.51 per share.

In other words, Atlantic Coast Line earnings have risen about twice as fast as railroad earnings generally, which is indicative of the growth in Atlantic Coast Line.

[498] Q. Have you finished with your comment on that, Mr. Stott? A. I am sorry, yes.

Mr. Crossman: We offer this as Committee's Exhibit No. 7.

The Court: Very well.

. . . The instrument last above referred to was received and filed in evidence and marked Committee's Exhibit No. 7.

Mr. Crossman:

Q. Have you prepared a paper headed "Railroad common stocks", Mr. Stott? A. Yes, I have.

Q. Would you like to comment on that exhibit? A. Well, that, I am——

Q. Will you speak up a little, please? A. Every year I do a memorandum for the bank on the railroad industry, and the railroad securities that we hold. Just before I left for this hearing, that was in the process of preparation, and there are about two dozen railroads in the list that we hold, and I was struck by the fact that except for the Northern Pacific and a few of the coal roads, none of the railroads sold for more than—for as much as 9 times earnings.

I prepared this exhibit quickly, and I didn't have all the reports that we have, but I think that this exhibit indicates that certainly the big, well-known railroads don't [499] sell for more, much more than five, or six or seven times earnings, unless they are coal railroads.

Q. In your experience with the average amount—the average percentage paid out by railroads of the country, generally—by way of dividends,—the percentage of the amount available for dividends—exceed 55%? A. Well, I

BLEED THROUGH

would think that the amount of the dividends paid on railroad common stock would not exceed fifty-five percent of the earnings available for common stock.

I don't have the figure in hand. I think that there is not a railroad on this list—I think—that is paying as much as fifty percent of its earnings—common stock earnings—out, in the form of dividends.

Q. Have you any further comments, Mr. Stott, on the exhibit? A. No, sir.

Mr. Crossman: We offer the exhibit in evidence as Committee's Exhibit No. 8.

The Court: Let it be received.

. . . The instrument last above referred to was received and filed in evidence and marked Committee's Exhibit No. 8.

Mr. Crossman: That is all.

Mr. Turney: Do you have any further questions on direct?

Mr. Bourne: No.

[500] *Cross examination by Mr. Turney:*

Q. How long have you been acting secretary of the Deposit Committee? A. I think for about—from about April 1943.

Q. Well——

Mr. Crossman: What year? I didn't hear that.

A. April, 1943.

By Mr. Turney:

Q. What position did you have with Morgan and Company prior to that time? A. I was Junior Statistician in the office.

Q. Did you perform any services for the Committee prior to that time? A. No, sir, I did not.

Q. Are you familiar with the recent financing of the Atlantic Coast Line bonds? A. Yes. Generally.

Q. What was the interest rate of those bonds? A. Four and a quarter percent.

Q. And the press announced yesterday that a commitment had been made? A. That is right.

Q. Are you familiar with the commitment? A. Not in detail.

[501] Q. Are you familiar with the commitment? A. Yes, sir.

Q. By whom was it made? Who was the committer? A. The insurance companies.

Q. What insurance companies? A. I don't know.

Q. Do you know whether or not——

Mr. Crossman: Your Honor, that has no particular interest here, and it is out of order and taking a lot of time. This witness has not testified on direct examination, anything about this deal. He is not an employee of the Coast Line, and I submit this line of testimony is improper, and a waste of time.

Mr. Bourne: I am going to call a witness later that will testify about the commitment.

The Court: Overruled.

By Mr. Turney:

Q. Are you familiar with the American Telephone and Telegraph common stock? A. Yes.

Q. That stock has been paying a nine dollar dividend for many years, has it not? A. Yes, sir.

Q. And has been selling on the basis of about six percent for many years? [502] A. Yes.

Mr. Crossman: You have to answer, Mr. Stott. The reporter can't see you nod. Say yes or no, or whatever you want to.

A. Yes. Excuse me.

BLEED THROUGH

By Mr. Turney:

Q. What has been the average, per year, of the earnings of that company? A. I am not at all sure of that, Mr. Turney. I think—didn't the telephone company earn somewhere around twelve or thirteen dollars this year?

Q. Mr. Stott, I asked you if, as a matter of fact—A. Yes.

Q. —for the last fifteen years, in practically every year, and practically every year since 1930, that the pay-out of that company has been in excess of ninety percent? A. Well, it probably has been.

Q. Now, that stock has been considered one of the prime stocks on the stock market, hasn't it?—for a utility? A. Yes, sir.

Q. And yet you say that any stock of a railroad should have a pay-out not in excess of fifty-five percent? A. No, I didn't say that. I said that is what railroads have been paying out. I would say that a higher pay-out was desirable.

[503] Q. Now, is it not true that if the deficiency judgment is allowed by the Court to the First and Refunding Bondholders, that your computations on Exhibit 5 and 6 with respect to the amount received by the unsecured creditors, is meaningless? A. It is not meaningless. It would change.

Q. Well, it would change by about five decimal places, would it not? A. That's right.

Q. It would change 940,000 to about 9.40? A. It would do the same thing under the Interstate Commerce Commission Plan.

Q. Right. But, it wouldn't make the difference that you show between the two Plans, would it? A. Well, as a matter of fact—I better be sure—they show about ten dollars a bond, something like that, in the deficiency judgment. That could—yes, you are right. It could narrow that—would narrow that.

Q. Wouldn't it tend to eliminate the difference that you show? A. It would tend to do that, yes.

Q. Now, do you say that a refunding mortgage bond 4%, by the East Coast Railroad Company, subject only to a prior mortgage bond—the entire principal amount which is deposited with the Trustees, with a standing call—I believe you put it to redeem par and interest, at any time—— [504] A. You mean par and all interest to the maturity date?

Q. No, interest to the date of call—— A. Yes.

Q. You say that that bond would sell at 85? A. Indeed I didn't. That's not the bond I am speaking of.

Q. That is the bond under the St. Joe Plan? A. You are speaking about the First Mortgage Bond.

Q. No. No. I am speaking about the refunding bond that is subject to that kind of a mortgage. A. Oh, yes, I think they would sell at 85 to 90.

Q. Now, what is the first and refunding bond selling for now? A. 85-87 somewhere within that range.

Q. And you think that that paying 4% interest with the entire principal on deposit in the hands of the Trustees would sell for less than the present bond—— A. Well——

Q. Wait, let me finish my question. ——than the present bond, which is paying no interest and is paying very little interest since 1930? A. Well, there is a very substantial amount of cash in the Florida East Coast. There is also before each bondholder, a Plan, on the railroad, an Interstate Commerce Commission Plan, which should make the bond, according to my calculations, worth over a thousand dollars, and on the other hand, a St. Joe [505] Plan which should make the bonds worth over a thousand dollars. To my mind the price of the Florida East Coast Refunding Bond today, reflects the price for the control of the railroad, bidding for the control of the railroad.

Q. Now, doesn't that fact also destroy your valuation of 85 for the new bonds under the St. Joe Plan? A. Not at all.

BLEED THROUGH

Q. Now, sir, is it not true that the members of that Committee and their affiliated corporations have been the bankers for the Atlantic Coast Line Railroad company for many years? A. To my knowledge we did not have a bank account from the Coast Line for many years, and I don't even know if we have one now.

Q. Is it not true that the present financing of the new Mortgage bond issue was underwritten by Morgan-Stanley? A. I say I am not familiar with that, but I would go on record as saying definitely not.

Q. Morgan-Stanley has nothing to do with that? A. I must say I don't feel competent to answer that question. My feeling is no.

Q. The Committee sold its first and refunding mortgage bonds I believe you said—— A. Yes, sir.

Q. ——to the duPont Trustees or the St. Joe Paper Company in 1942? [506] A. I think that is right. I am sure it is.

Q. Were you familiar with the transaction at that time? A. No, I was not. I was familiar with it after it had occurred.

Q. Do you know at what price they sold those bonds? A. My recollection was sixteen and a half.

Q. Well, do you think that the Committee was acting on the same sort of advice in recommending and selling the bonds which it held at sixteen and a half? —that it is acting on now in this present transaction? A. I don't know what advice it was acting on in '42. I think the sale of the bonds at sixteen and a half—the fact that they have gone up to 80 at the present time is not a vital issue. Almost every reorganized rail did the same thing. In my idea, the Florida East Coast bonds have gone up less than the average of those bonds, and in fact I think would be selling at a lower price today were it not for the fight for control of the railroad.

Q. Now, if your estimate of the market price of the St. Joe bonds is wrong then,—and that bond would sell for

par,—then definitely the St. Joe Plan would be a better plan for the bondholders, wouldn't it? A. That is not at all so. Even if the St. Joe bonds should sell for par, there are sufficient other features, such as the lien orders, the station reserve and the P & O docks—[507] that, in the opinion of the members of the Committee—would make the Interstate Commerce Commission Plan better. Even at par.

Q. If you take your last sheet, your exhibit 6, and add to it the hundred dollar under pricing there on that statement, the amount would compare to one thousand fifty dollars per bond under what you call the Interstate Commerce Commission Plan and $1,150.00 per bond under the bondholders plan, is that right? A. That's right. Of course, I don't concede——

Q. Well——

Mr. Crossman: Let the witness finish answering the question before you interrupt.

A. That's right. I don't concede that.

By Mr. Turney:

Q. Isn't it also true that if the P & O docks and the Hialeah property is not sold, that they will remain assets of the present bondholders? [508] A. That's right.

Q. Is it not also true that if to the extent that further property is acquired under lien orders by the Court and that they—and those improvements are made on the property and the property reverts as a result of these proceedings to its owners, that you will receive the full benefit of those improvements? A. The stockholders will receive the full benefit.

Q. Under— A. The bondholders would not.

Q. Under the Bondholders Plan, is there not a permanent right to convert into common stock at any time? A. If one is of the opinion that the common stock is around

BLEED THROUGH

twenty-five dollars a share, that right is extremely remote and worth little or nothing.

Q. But if the people who have their money in it, and who believe in Florida and the Florida East Coast, price it at one hundred dollars, then that right is a very valuable right, is it not? A. I don't—I don't follow that argument at all.

Mr. Turney: Very well, thank you.

By the Court:

Q. Mr. Stott, what is your connection with J. P. Morgan and Company, or Morgan-Stanley? A. I am Assistant Vice President of J. P. Morgan and Company.

[509] Q. What is Morgan-Stanley? A. Morgan-Stanley is an underwriting house that is not connected with J. P. Morgan and Company.

Q. There is no tie-in between the two companies at all? A. There are Morgans in both firms. There is not stock tie-up between them whatsoever.

Q. What about the relationship between the Atlantic Coast Line and either J. P. Morgan Company or Morgan-Stanley? Is there any business relationship between those two firms? A. We have done business with Atlantic Coast Line.

Q. Who is "we"? J. P. Morgan Company? A. J. P. Morgan and Company.

Q. You have underwritten a lot of their bonds, haven't you? A. In many years past, I am quite sure we have.

Q. I am speaking of the present. I am not so much interested in past history, but present. What is the present line-up between Atlantic Coast Line and Morgan, or Morgan-Stanley? A. I think that at the present time there is a deposit relationship with J. P. Morgan and Company on the Atlantic Coast Line. I am not positive of that, but I think there is.

Q. Banking deposit? A. They have a deposit relationship. In addition, we have their equipment trust certificates as a bank, conditional sales contracts as a bank, and we have given them advice from [510] time to time, with regard to problems that have come up.

Q. Then, there is a pretty direct and close connection between the Atlantic Coast Line and J. P. Morgan, is there? A. No, no more than between many other railways and J. P. Morgan.

Q. Well, at least J. P. Morgan and Morgan-Stanley advise Atlantic Coast Line in their financial problems, do they? A. Well, I think that it is possible they do.

Q. Well, they are not strangers, then? A. No, they are not strangers.

Q. Well, Mr. Anderson, the chairman of the Deposit Committee, what is his connection with J. P. Morgan and Company? A. He is chairman of the Executive Committee of J. P. Morgan and Company.

Q. Chairman of the Executive Committee? A. Yes, sir.

Q. He is Chairman of the Deposit Committee of which you are a member? A. That is correct.

Mr. Walton: May I ask Mr.—

The Court: Let us see where you stand. Now, are you finished?

Mr. Turney: I have finished, Your Honor.

[511] *Cross Examination by Mr. Walton:*

Q. Mr. Stott, I wish you would please refer to Committee Exhibit No. 1. Am I correct in understanding that the theory of that exhibit is that four million dollars cash should be included as a part of all that the Coast Line would pay under the ICC Plan, or the Fourth Plan? A. Yes, sure.

Q. Is not that four million dollars offset by another four million dollars for the estate to pay to Coast Line at the same time? A. You are talking about a million dollars

BLEED THROUGH

of working debt, of working capital, and the three million dollars of station?

Q. Yes, sir. A. The three million dollars of stations, it seems to me is quite a separate item. The Coast Line is buying this property on the assumption that the station should have been built, and it is paying for the property with the money to build the stations as such, so that I don't think that is a factor in this four million dollar figure at all. I think the one million dollars to a certain extent is a factor, but I think that the Florida East Coast Bondholders receiving 15% equity in the assets—in other words, this million dollars does not go to the Coast Line, but to the merged [512] company; and the Florida East Coast would have—bondholders would have 15% of that million dollars entire. Do you see what I mean?

Q. Will you answer my question, please? A. Yes, I am sorry. Q. Is there not an offsetting four million dollars to be paid to Coast Line under the Fourth Plan? A. Yes, but I have tried to explain that I think that is a part of the Plan.

The Court: Part of the what?

The Witness: Of the Plan. The three million dollars in stations that the Interstate Commerce Commission Plan clearly says that the Coast Line is paying for the Florida East Coast as if these station improvements had been made. Station improvements that should have been made.

Q. Is not the four million dollars which the Fourth Plan provides to be paid the Coast Line a part of the funds which this Court had adjudged belongs to the bondholders? A. No, sir.

Q. It is not? A. No, sir.

Q. Can you explain why it isn't? A. Well, in my opinion, it certainly isn't. What part do you think it is?

Q. Can you explain why the four million dollars to be paid [513] to the Coast Line is not a part of the money in

the hands of the Railway Trustees which the Court has adjudged as money belonging to the Bondholders? A. Well, now, that question of the lien orders is a very involved question, if that is the one you are referring to.

Q. No, sir; I am not referring to lien orders at all. Are you familiar with Judge Strum's decision disapproving the First Plan? A. I am not.

Q. You are not familiar with the adjudication which he made there concerning money in the hands of the railway Trustees? A. No, I am not.

Q. Let's approach it, then, on an arithmetical basis. If you eliminated from Committee Exhibit No. 1 the four million dollars shown there in cash, what would be the par or principal amount paid by Coast Line? A. Well, if you would eliminate it from there, you have got to add it into the excess cash. There is four million dollars coming in from the Coast Line.

Q. Will you please answer my question, sir? A. I will answer it—what would be the remaining par value?

Q. Yes, sir. A. It would be four million less—forty-two million, six.

[514] Q. You mean, it would be $42,500,000? A. I mean, forty-two million, five, excuse me.

Q. Now, if you also eliminate the four million dollars from Committee Exhibit 1, what would be the estimated market value? A. Thirty-six million, five; but, of course, I want to say again that I don't think this is the proper thing to do.

Q. Now, will you please turn to your Exhibit 5, Committee Exhibit 5? A. Yes, sir. (Referring to papers.)

Q. If you also eliminated from that Committee Exhibit 5 the one million dollars to be paid to Coast Line for working capital and the three million dollars to be paid to Coast Line as a reserve for stations—— A. Now, that is the——

Q. How much—pardon me. Let me finish my question. How much cash would then be distributable to bondholders? A. Well, there would be four million more.

BLEED THROUGH

Q. There would be $11,411,000.00; is that correct? A. That is correct.

Q. If both of those things were done, would the bondholders receive any more or any less than your exhibits show? A. No, sir; they would not.

Q. They would receive exactly the same thing, would they not? [515] A. That is correct.

Q. But that would be getting four million dollars from the debtor's railway trustees? Four million dollars more than your Exhibit 5 shows: is that correct? A. Yes. Could I make a comment on this business of your taking cash and saying it goes to the Coast Line?

Q. Would you just please answer my question, please?

Mr. Crossman: The witness is entitled to comment on his answer, your Honor.

The Court: Well, to a reasonable degree, you can go ahead and explain your answer to a reasonable extent, if you wish.

The Witness: What I would like to say that in my opinion this cash does not go to the Coast Line. It goes to a merged company, of which the Florida East Coast Refunding Bondholders will own fifteen percent equity. That fifteen percent equity of the Florida East Coast Bondholders will give them—now, I don't know what the current assets of the Coast Line are, but I am sure there is ten million of cash in the Coast Line, ten million of cash and Governments: but by this Plan of Refunding, you would get back a million, five from the Coast Line—do you see what I mean on that thing?

Q. When would the Bondholders I represent receive that million, five, and when could they spend it? When could they reinvest it in something else? A. That, of course, is what I am interested in, is getting [516] money now. I feel that you are going to get more under the Coast Line.

Q. Now, will you estimate as to when the Bondholders I represent will receive that million, five? When they can reinvest it? A. If the Plan had gone through, they certainly would have been getting income and dividends from the Coast Line securities in the past.

Q. Which plans are you speaking of? A. If the merger had taken place before this——

Q. Which plan are you speaking of? A. I am not speaking of any plan at all, I am just saying if it had been a merged company, the bondholders would have been getting income right along.

Q. Well, tell me some day, when the bondholders I represent would receive the one million, five hundred thousand dollars that I just spoke of, and when they could reinvest it in something else? A. I don't know when they would get it, but they would have an equity in that amount of money.

Q. And that is the reason why you think that the four million dollar payment from the Coast Line and the four million dollar payment to Coast Line shouldn't be offset? A. That, plus the fact that the—it seems to me the ICC Plan is very clear on the terminal question, that the Coast Line bid for the properties is for the properties assuming [517] that these terminals had been built. I am not completely familiar with the terminal situation, but it seems to me that on the record at one time everybody admitted that a great deal of money had been spent for terminals.

Q. Do you find—— .

The Court: The company will still own a terminal when you take this three million dollars and build it, take this three million dollar station, the company will own the station, hold it just like it gets the three million dollars.

The Witness: Yes, sir.

The Court: Don't those two considerations about cancel one another?

BLEED THROUGH

The Witness: Yes, sir; I think so.

The Court: So, when you get down to the last analysis of it, the Coast Line puts in four million, but it gets a three million dollar station and a one million dollar working capital?

The Witness: Well, I would say that that is probably correct but that the bid for the properties includes the consideration of terminals. What I am trying to say is that just because a three million dollar reserve for stations is eliminated for the St. Joe—from the St. Joe Plan—doesn't mean that a substantial amount of money won't have to be spent on stations.

Q. If three million dollars was spent on stations under [518] the Interstate Commerce Plan, it would not affect in one way the cash payment to the Refunding Bondholders? If three million was spent on stations under the St. Joe Plan, the cash payment to the bondholders would go three million dollars.

I believe that on your direct examination you mentioned the market price of L & N common stock? A. Yes, sir.

Q. You said you thought it was selling at five three or five four? A. Yes, sir.

Q. As I understand it, that is the stock which underlies the Coast Line stock? A. The Coast Line common stock is really a package of two principal things: One is the Coast Line Railroad. The other is one share of the L & N railroad for every share of Coast Line. I do not say that the L & N is the principal thing. The Coast Line Railroad alone in 1951 earned twelve dollars a share.

Q. If my client, any one of my clients should sell one of his Florida East Coast bonds at the current market— A. Yes, sir.

Q. What would he receive for that? A. Again, I think 85 to 87—$850.00, $870.00.

Q. With that cash, how many shares of the L & N stock could my client receive? [519] A. Well, I would have to figure that out.

The Court: What was that? You said how many shares of L & N stock would your client receive?

Mr. Walton: Purchase. I meant.

The Court: Of L & N stock.

The Witness: Is the price of 53 or 54 correct?

By Mr. Walton:

Q. I am accepting your statement on that. A. Well, I figure sixteen shares, approximately; is that correct?

Q. I haven't checked your computations. I believe you mentioned that there was a stable dividend rate of four dollars a share? A. I didn't say that the dividend had always been four dollars a share. I said there has been stability of dividends.

Q. The present rate is four dollars a share? A. Four dollars a share.

Q. What total amount of dividends would that number of shares of L & N stock produce? A. It would carry an equity in $160.00 of earnings and $64.00 in dividends.

The Court: What was that question? Equity of what?

The Witness: $160.00 in earnings of L & N—roughly—the L & N allows $9.75 a share. A simple calculation--I would say ten dollars, sixteen shares.

[520] By the Court:

Q. What are they paying now?

The Witness: They are paying sixty-four dollars.

The Court: Yes.

The Witness: Should the sixty-four dollars of income.

The Court: All right.

By Mr. Walton:

Q. What do your exhibits show would be produced by way of annual income per one thousand dollars of present

BLEED THROUGH

Florida East Coast bonds? A. Now, which bond are you talking about, sir?

Q. Under the Fourth Plan? A. The ICC Plan?

Q. Yes, sir. A. Which was— well, I think it is $43.50. That is assuming 4% return on the cash. It is about forty dollars without the return on the cash.

Q. Well, even assuming a return on the cash, does it not mean that if my clients are forced to accept the Fourth Plan, the maximum annual income they can receive per one thousand dollar bond is $43.50; whereas if one of my clients today converts one of his bonds of his L & N common stock, he can receive an annual income of sixty-four dollars? A. He can probably receive even more, if he converts it into Atlantic Coast Line common stock.

[521] Q. Is that true? A. I am not positive that it is true, but I wouldn't be surprised. No, I think it would not be true. I will take that back. If you convert it into Coast Line Stock, he would receive approximately fifty dollars annual income, wouldn't he? That's right. That's right, you are correct.

Q. Well, before he ever invested in the Coast Line stock, he would have fifty dollars cash to put in his pocket and take away, wouldn't he? A. That's right.

Q. I wish you would refer now, to your exhibit 2. That again starts off with the same four million dollars that we have been discussing and about which the Judge asked you some questions, does it not? A. Yes, sir.

Q. It includes $88.88 per bond as the amount which the Bondholders would receive from that four million dollars, does it not? A. That is correct.

Q. Now, deducting that—if we deduct the $88.88 from your $1,016.00 showing the par and stated values that the Bondholders would receive, what would be the arithmetical result?

(Witness calculating)

A. I figured it would be $927.45, but I want to say that [522] that is purely an arithmetical result, in my opinion.

Q. Well, if we assume that I am correct in contending that it is a mere offset, on the basis of that assumption, would not the total par and stated value to be received under the Fourth Plan for a one thousand bond be $927.45? A. On this schedule, it would be. Now, if you take into consideration excess cash and wash it out of there, you would come back to the same figure. If you washed the four million out of this figure and you washed the one and the three with the stations on the other side, yes, you come back to the same figure—of my figure.

Q. Well, on the basis of your Exhibit 2—— A. Yes, sir.

Q. —if we make the reduction which I asked you to make, would not the total par and stated value receivable per one thousand dollar bond under the Fourth Plan be $927.45, according to your computation? A. It would.

Q. And would not the value receivable per one thousand dollar bond according to your computation be $727.00? A. May I make a comment at this point?

Q. Will you answer my question, first? A. Yes, sir.

Q. And then make your comment. A. That is correct.

[523] Q. That is correct. A. That is correct.

Q. Now, I think the Judge has ruled that you can make your comment. A. The comment that I would like to make is this. It seems to me that this is one big package made up of two parts, and if you want to take four million dollars out of one part and reduce that part by these four million dollars, then you take the four million dollars you are talking about, with the deductions and reserves of the other, and you increase the other part by four million dollars. Do you follow what I——

[524] Q. Precisely, Mr. Stott, yes. A. What?

Q. Yes, I agree with you one hundred percent that reduction of one would increase the other. But am I correct in assuming—if I am correct in assuming that the money to be distributable referred to over on your Exhibit 5 is money which the Court has already adjudged belongs to the bondholders, then wouldn't they, on that basis, merely

BLEED THROUGH

be getting their own money back? A. Yes, I suppose that is true, if there is such a provision carrying way back to the First Plan. Is there? Well, I don't know about that. I am sorry.

Q. I would like for you, on Exhibit 2, to refer in the first column of figures, to the amount which you show as being the Coast Line three and three-quarter percent bonds.

Q. Which would be received by the Bondholders under the Fourth Plan? A. Yes, sir.

Q. Is that the amount of bonds which they would receive as Bondholders, or—or is it the amount of bonds which they would receive as Bondholders plus the amount of bonds which they would receive as purchasers of an unsecured claim? A. The second is correct.

Q. The second is correct? A. The second is correct.

[525] Q. Now, will you tell us the amount of bonds which they would have received under the Fourth Plan—Coast Line three and three-quarter percent bonds, if they had not purchased the unsecured claim. A. Again, that is the same in both plans, but I am very glad to make a calculation for you (calculating). Do you have in mind the amount of the First Mortgage Bonds? I think it is 588.

Q. $588,000 is my computation. A. Yes, that is correct. It would be $13,412,000 bonds, roughly.

Q. Come down now to the common stock as you show it. The stated value there they would receive. A. Yes, sir.

Q. Is the same situation true there? A. That's right. And as I say, the same situation is true in the other plan.

Q. The $5,720,000 of common stock which you show is, as I understand it, then, the common stock which they would receive as bondholders under the Fourth Plan, plus common stock they would receive as purchasers of an unsecured claim? A. You are perfectly right.

Q. Can you tell us the amount of common stock they would receive solely in their capacity of bondholders? A. Well, I have calculated $5,647,000. Is that correct?

[526] Q. Well, the difference between those figures shown on Exhibit 2 and the ones which you have calculated represents what would go to them as purchasers of an unsecured claim, does it not? A. Yes, that is the difference between the eighty-one percent and one hundred percent that I spoke about.

Q. Do you consider that their own money was invested in purchasing that unsecured claim? A. Yes.

Q. You do. Thank you.

You have several times in your direct testimony mentioned what we call "fight for control". A. Well, I probably—excuse me. I expressed that perhaps incorrectly. I meant there are two parties bidding for the properties of the Florida East Coast.

Q. It is not a question of control at all, is it? Isn't it a question of ownership rather than control? A. Well, I don't know the difference. Could you explain to me a little more just what you mean?

Q. Well, in your ordinary conception don't you think "control of a company" as being a majority control or working control, based on the number of shares of stock that are owned? A. Yes.

Q. Is Coast Line seeking any such control here? [527] A. No, sir. I said that I had expressed myself incorrectly.

Q. Then, as a matter of fact, isn't it a fight not over control, but a fight over ownership? A. Well, I think that probably you are right. I am not familiar with completely the difference, but I think I do see what you mean.

Q. In appraising the Fourth Plan as against what you called the "duPont Plan", that I call the "Bondholders' Plan"— A. That's right.

Q. Did your committee take into consideration the comparative income tax consequences of the two plans? A. No, sir; we did not.

Q. Is that not something important to be taken into consideration? A. I am not familiar with that. Is it sure that that would be different?

Q. Do you not consider it important that your committee in evaluating the two should determine whether

BLEED THROUGH

there is any difference? A. I suppose that is a factor we have overlooked.

Q. So that the judgment which has been expressed here on behalf of the committee omits any consideration of that factor? [528] A. My judgment has omitted consideration of that factor. I am not sure that the Committee's judgment has not taken it into consideration.

Q. Well, can you tell us whether the Committee's judgment does include consideration of that factor? A. I don't know.

Q. Have you or the Committee undertaken to make any comparative evaluation of the Fourth Plan as against the Third Plan for determining which offered the most to the Bondholders? A. No, sir. That is an extremely involved set of calculations and I would hesitate to say that we have. I testified in the hearings about the Third Plan, as you know, and my valuations were a good bit lower than the present valuation.

Q. The Committee has not undertaken to make the comparative evaluation for the purpose of determining whether the Fourth Plan offers the Bondholders more than the Third Plan? A. No, sir.

Q. Is that correct? A. That is correct.

Q. You are familiar with the fact that this Court adjudged that the Third Plan was not fair and equitable and did not afford due recognition to the rights of the Bondholders, are [529] you not? A. Well, I am certainly aware that the plan was turned down. I don't know the—all the legal grounds.

Q. You have read that decision, haven't you? A. Yes, I have read the decision.

Q. Isn't that what Judge Sibley held? A. I suppose it is.

Q. You are familiar with the fact that the Court of Appeals affirmed that decision? A. I really am not.

Q. You are not? A. I am not. In other words, I just don't know, technically, what was held in the Court of

Appeals decision. I am not trying to hedge in any way at all.

Q. You and the Committee know, however, that the Court did disapprove of the Third Plan? A. Yes, sir.

Q. And you know it was disapproved as not being fair and equitable and as not affording due recognition to the rights of the bondholders? A. The Committee's feeling is simply one of monetary valuation. We feel that the monetary valuation under the Interstate Commerce Plan is better than under the St. Joe Plan.

Q. Now, will you answer my question? [530] A. Sir? I am sorry, would you read the question?

. . . The question was read.

A. Yes.

Q. With that knowledge, the Committee did not, in appraising the Fourth Plan, undertake to determine whether it offered the Bondholders any more than the Third Plan? A. No, sir; we did not.

Mr. Walton: Thank you.

Mr. Brown: I would like to examine him.

The Court: How long do you want?

Mr. Brown: About two questions, your Honor.

The Court: Well, you, at least, have increased your request one hundred percent over these other gentlemen over here.

Well, I think we will wait until after lunch. Mr. Adair, here is that document you let me have; very much obliged. Give it to Mr. Adair.

Now, the Court does not wish to be understood as implying that it feels that the parties are unnecessarily consuming any time—just sit down—in the hearing. But the fact remains that the hearing is becoming more extended than anyone anticipated, or at least the Court anticipated at the beginning. So, in order to enable me to meet other engagements which I have made and must keep with the Court of Appeals a little later, and in order at the same

BLEED THROUGH

time to [531] consider and analyze this very complicated and involved testimony and to decide this case and dispose of it before I have to go on to other things, it will be necessary, I believe, to curtail now the extent of this hearing. That is, to say, curtail the number of matters to be taken up for disposition.

I had hoped that, as I said originally, that I could play other decks and take up and dispose of all the pending and undisposed of matters in this reorganization. I do not think that is going to be practical, if I am to give the time and attention to each of these matters that they deserve and will have before I dispose of them. So, in order to solve that problem, I am going to now eliminate from consideration on this hearing all matters except the proposed Fourth Plan of Reorganization itself on its merits, and such incidental motions as must necessarily be considered in connection therewith. In other words, we will consider, and take plenty of time—all the time that is necessary—to hear the evidence and the argument on the merits of the proposed Fourth Plan, and anything directly and indispensably connected therewith; but I think I will have to close the door right there. I don't like to do so, but I don't believe there is going to be time to go any further; and that means that the Miami station matter and any other incidental matters not essentially involved in the reorganization plan itself must go over until another day, which I will get to [532] and announce as soon as I can.

Here we are now in the middle of the fourth day of testimony, and we are still not finished with the testimony. While we have taken up a lot of time, I do not believe that anybody is wasting any time. There is more testimony to be heard, then, I believe some sixteen hours of argument requested; and that means, by the way, that the hearing must inevitably go over into next week, and since that is the case I

think it will be better for us all to take a breathing spell Saturday to endeavor to assimilate, and compose our minds to a great many of these facts we have already heard; so there will be no wasting of Saturday. If I could finish the session on Saturday and wind it up, I would hold the session, but it seems out of the question, so we might as well go over until Monday. We will resume and finish the hearing on the proposed Fourth Plan on the merits; that is the thing that I have for disposition; I will cut that off right there, because it seems impossible to take up these other matters. One of them, the Miami station matter, will involve a "right stach" of testimony, and so that will go over as well as the other important undisposed of matters until another day, which I will announce later.

We will continue with the Plan on its merits, having no session Saturday, and going over and continuing until its completion. Does anybody wish to ask any questions about it, [533] if you don't understand it.

Mr. Adair: May I inquire, your Honor, if the motion to dismiss the reorganization proceedings——

The Court: Yes, that will be retained for consideration. Now, anything which directly bears on the plan itself, and what happens to it, I will retain; but I anticipate the Miami station matter may take a day or two, these other matters may take considerable time; and if I go off into them now I am not going to have sufficient time to consider and decide and assimilate all these facts that bear on the merits of the reorganization plan, and that is the major matter to be considered now, the overriding matter.

Mr. Bourne: Your Honor, could I inquire how your Honor classifies the St. Joe Paper Company's motion asking for additional liens? They have filed a motion, or leave to file an amended petition, with respect to liens——

BLEED THROUGH

The Court: Back before.

Mr. Bourne: Back before.

The Court: Well, I am going to defer that. I think that is a matter that can be separated from the question of whether or not this plan is fair and equitable or not. Do you think that they are separable, or do you——

Mr. Bourne: Of course, I think they are separable, but I didn't know St. Joe Paper Company thought they were [534] separable. And it so happens in preparing my brief I have dealt with the subject of liens, in reference to their motion.

The Court: Yes, I understand that your briefs may not quite coincide with what I have said.

Mr. Bourne: There won't be any objection to filing a brief on excluded matter?

The Court: Not at all, but I think consideration of that matter can go over and must, because I am going to insist on having adequate time to consider all these complicated facts, and assimilate them, and understand them, if possible, before I decide this matter; and I want to devote my entire attention and undivided attention to the merits of this Plan.

Take a recess until 2.15.

. . . And thereupon Court adjourned, to be reconvened at 2.15 o'clock in the afternoon, Thursday, February 7th, 1952.

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[535] . . . And at 2:15 o'clock P. M., Thursday, February 7, 1952, Court reconvened pursuant to adjournment of the morning session, and the following further proceedings were had:

The Court: You may proceed, gentlemen.

MR. WILLIAM G. STOTT, having been previously produced and first duly sworn as a witness, was recalled to the witness stand and further testified as follows:

Further cross examination by Mr. Brown:

Q. Mr. Stott, you said on direct that you were secretary of the Deposit Committee. A. Acting Secretary.

Q. You said something which I did not hear, about the availability, at the present time, of the right of withdrawal. A. Bonds may be withdrawn now, and have been able to be withdrawn ever since, I think, April '49. It might have been a little before that. —Without payment of any withdrawal fee.

Q. Could you state the date of the last circular letter sent by the Committee to all depositing bondholders? A. I could not, but I think '43, probably.

Q. None, since 1943? A. I think not.

[536] Mr. Brown: That is all.

Cross examination by Mr. Bourne:

Q. Mr. Stott, you have been asked about the connection between J. P. Morgan and Company, Incorporated, and the Atlantic Coast Line Railroad. Has J. P. Morgan and Company, Incorporated, any relations, or bank accounts or otherwise, with the Southern Railway? A. I don't know about bank accounts—I think we have. In my opinion our relationships with the Southern are very much the same as our relationships with the Coast Line, perhaps a little closer.

Mr. Bourne: That is all.
The Court: Any further questions?
Mr. Turney: Yes, sir.
Mr. Crossman: Yes.

BLEED THROUGH

Re-direct examination by Mr. Crossman:

Q. Mr. Stott, Mr. Turney, this morning, as I understood it, said something about your valuing of bonds that were secured by deposit of cash in full principal amount. Am I correct in my belief that the only bonds that are to be secured by cash in full principal amount, are the old First Mortgage Florida East Coast bonds, under the St. Joe Paper [537] Company plan? Is that correct? A. Yes, they would not be bonds to be issued under the St. Joe Paper Company Plan. They would be the old existing four and a half bonds.

Q. I didn't ask you to value those bonds? A. No, sir.

Q. There was no purpose in doing so. A. No, sir.

Q. Mr. Stott, I just want to clear the relationship. J. P. Morgan & Company, Incorporated, is the bank for which you work? A. That is correct.

Q. Is it a trust company incorporated under the laws of the State of New York? A. That is right.

Q. And does a commercial banking business? A. Yes, sir.

Q. And since the Banking Act of '34, to date I believe, has not been able to engage in underwriting, except municipal and limited types? A. That's correct.

Q. Not to include railroad securities? A. That's correct.

Q. Morgan-Stanley is what type of organization? A. That's investment banking house.

[538] Q. I mean, legally, a corporation or—— A. It's a partnership.

Q. Are any of the partners of Morgan-Stanley & Company, officers, directors or employees of J. P. Morgan & Company, Incorporated? A. No.

Q. None of them are employees of J. P. Morgan, Incorporated, or have anything to do with the direction of Morgan-Stanley Partnership? A. No, they do not.

Q. Mr. Stott, if you do what Mr. Walton suggested this morning, and take four million dollars cash out of your

exhibit 1 and out of your exhibit 2, must you not, of necessity, add a similar amount to the twenty-three million dollars, approximately, the adjusted net current assets in exhibit 5? A. Yes, you would.

Q. Is it not true that you must read all of your exhibits as a whole? A. Yes, sir.

Q. And as far as the exhibits go, you have broken them down only for purposes of analysis? A. Yes.

Q. And, exhibit 6 summarizes what you call the package values and the excess cash distributable. A. That is correct.

[539] Q. Is it not true that under the Plan, the Atlantic Coast Line contributes four million dollars in cash? A. That is right.

Q. That is under the Interstate Commerce Commission Plan? A. That is under the Interstate Commerce Commission Plan.

Q. Under the St. Joe Paper Company Plan, does the St. Joe Paper Company contribute any cash? A. No.

Q. When you testified here, before, I believe that you told me that you had a study made of the depositors of the Committee and at that time, three years ago, they were, for the most part, original depositors. A. That is correct.

Q. Has there been very much change since then? A. I don't think there has.

Mr. Crossman: I have nothing further, your Honor.

The Court: Are we through with this witness? . . . To which inquiry there was no response.

The Court: Come down, Mr. Witness.

(Witness excused.)

The Court: Call your next witness.

Mr. Bourne: Can I call Mr. Lemmon, before I resume with Mr. Ormond? He wishes to leave the city.

[540] The Court: All right.

BLEED THROUGH

MR. FRANK D. LEMMON having been produced and first duly sworn as a witness, testified as follows:

Direct examination by Mr. Bourne:

Q. Would you give your full name and address to the Reporter? A. My name is Frank D. Lemmon. My address is 27 Circle Road, Scarsdale, New York.

Q. You are an officer of the Atlantic Coast Line Railroad Company? A. I am.

Q. What is your title? A. Vice President and Secretary.

Q. What is your phase of responsibility as Vice President? Operating, financial, or what? A. Financial and administrative matters.

Q. Are you familiar with the proposed refunding of the First Consolidated Mortgage Bonds which come due this year? A. I am.

Q. When do they come due, by the way? A. July 1, 1952.

Q. And what is the amount of them? [541] A. $22,388,000.

Q. Has the Atlantic Coast Line made an arrangement to raise all or part of the money necessary to meet that maturity? A. It has, to the extent of twenty-two millions of dollars.

Q. And what is to be issued in that connection? A. There are to be issued, $22,000,000 of Series B General Mortgage four and a quarter percent bonds, dated June 30, 1952, payable twenty years later.

Q. And that is a new series of general mortgage bonds, issued under the General Mortgage, which is already outstanding, is that correct? A. That is correct.

Q. And, have commitments been obtained from prospective purchasers of the twenty-two million? A. There have.

Q. And, speaking generally, who are they? A. A number of insurance companies and banks.

Q. Any commercial banks or savings banks? A. No commercial banks.

Mr. Bourne: That is all.

The Court: You may cross examine.

Mr. Bourne: I have one other thing.

By Mr. Bourne:

[542] Q. Will you state briefly for the record, what the relations are, if any, bank accounts or otherwise, between the Atlantic Coast Line Railroad Company, and J. P. Morgan & Company, Incorporated. A. We have a modest deposit account with J. P. Morgan & Company.

Q. What do you mean by "modest"? How big is that? A. A hundred thousand dollars.

Q. And how long have you had that? A. About three and a half to four years, I should say.

Q. How much do your total bank accounts usually average? A. Those that—in New York City, which are the only ones I can speak of, oh, around, today, about two million dollars.

Q. How many other banks do you have accounts with? A. On the line?

Q. No, in New York. A. Oh, we have six other accounts in New York.

Q. Do you have any other relations with J. P. Morgan & Company, Incorporated? A. No, sir.

Mr. Bourne: That is all.

Cross examination by Mr. Turney:

Q. Did you have an underwriting agreement for the sale [543] of these bonds? A. No, sir.

Q. What was the application that you made to the Interstate Commerce Commission that was read here yesterday? A. Authority to endeavor to make a negotiated deal as against selling bonds at competitive bidding.

BLEED THROUGH

Q. Wasn't there a provision in that application whereby you were to pay one-half of one percent for a commitment fee? A. Stand-by charge, which is customary.

Q. Well, who got the one-half of one percent? A. Nobody has got it yet.

Q. Well, with whom was the agreement made?—To get it? A. The agreement will be made with each purchaser on the commitment.

Q. Sir? A. On the commitment, each person who made the commitment will get the stand-by charge for the call on the money, until next June 30th.

Q. Now, was there any other charge besides a stand-by charge? A. Well, to whom would the charge be directed?

Q. I am asking you. A. I don't know what you are talking about. What charge?

[544] Q. How much are you going to net on these bonds? What price are they to be sold at, net to the company? A. They are to be sold at the price of one hundred.

Q. Is there any discount, commission, stand-by charge—— A. There is a stand-by charge.

Q. —Of one-half of one percent? A. Of one-half of one percent.

Q. Now, that goes to the purchaser. A. That goes to the purchaser.

Q. So, in fact, then, they are being sold at ninety-nine and three-quarters? A. The net of those two figures is ninety-nine and a half.

Q. Ninety-nine and a half. Now, was there any underwriting fee, commission, or any other amount at all which will mean that the Atlantic Coast Line treasury will receive less than ninety-nine and a half for each one hundred of principal amount? A. There will be expended in connection with this issue of bonds, just as there is with any other issues of bonds, expenses, and there will be a payment of some kind to Morgan-Stanley & Company.

Q. For what? A. For their services in securing commitments for the twenty-two millions of bonds.

Q. Now, how many, or, did any of the banks or insurance [545] companies who are on the Deposit Committee, subscribe to issues of these bonds? A. Well, I am not familiar with the members of the Committee. Will you tell me their names, and I will tell you.

Mr. Patterson: National City Bank.

A. Is not a subscriber.

By Mr. Turney:

Q. The National City Bank is not? A. It is not a subscriber.

Q. First National? A. Is not a subscriber.

Q. Safe Deposit & Trust? A. It's not a subscriber.

Q. Metropolitan Life Insurance Company? A. Is not.

Q. Prudential? A. Is not.

Q. What insurance company is a subscriber? A. The Equitable Life Assurance Society of New York is a subscriber.

The Connecticut—at least the New England Mutual is a subscriber.

Q. What is that? New England Mutual? A. Yes. The Aetna Life Insurance Company of Hartford.

[546] The Connecticut General Life Insurance of Hartford.

The Mutual Benefit Life Insurance Company of Newark.

Connecticut Mutual Life Insurance Company of Hartford.

Jefferson Standard Life Insurance Company of Greensboro, North Carolina.

Q. What was the name of that?

Mr. Bourne: Here is a list.

By Mr. Bourne:

Q. Have you another copy of that list, Mr. Lemmon? A. Yes, sir. (Tendering same to Mr. Bourne).

BLEED THROUGH

By Mr. Turney:

Q. Will you continue reading the list? A. Jefferson Standard Life Insurance Company of Greensboro, North Carolina, is where I left off. Pilot Life Insurance Company of the same city.

The Life Insurance Company of Virginia, Richmond, Virginia.

The Liberty Life Insurance Company of Greenville, South Carolina.

The Peninsular Life Insurance Company of Jacksonville, Florida.

The Occidental Life Insurance Company of Raleigh, North Carolina.

And, I gave you before, the New England Mutual Life Insurance Company.

[547] Q. In addition to that, there is the First Continental Bank & Trust Company of Smithfield? A. Yes, they were on the list.

Q. Will you read the banks, so we have a complete list? A. The Dime Savings Bank of Brooklyn, New York. New York Savings Bank of New York City. The East River Savings Bank of New York City. And the First Citizens Bank & Trust Company of Smithfield, North Carolina.

Q. Do you mind stating what the commission or fee that you have agreed to pay Morgan-Stanley for these services, was? A. None has been agreed upon.

Q. Has any been discussed? A. It has been discussed to the extent that this particular kind of a transaction was something new in the financial world, as far as railroads were concerned, for some time. The breadth of the work of Morgan-Stanley, was to be decided, with relation to a fee to them, at a later date, and was to be satisfactory to the Atlantic Coast Line.

Q. And to them? A. Well, we hope so.

Q. And for what was the term of these bonds? A. Twenty years.

Q. Have you computed the net interest costs per hundred [548] dollars? A. No, sir.

Q. Would it be approximately four and about three-eighths? A. Well, it will be slightly over 4.25, and, how much, depends on what the costs are, and I have not estimated that.

Mr. Turney: That is all.

The Court: Any further questions? . . . To which inquiry there was no response.

Mr. Bourne: That is all, Mr. Lemmon.

(Witness excused.)

Mr. Louis F. Ormond having been previously produced and first duly sworn as a witness, was recalled to the witness stand and further testified as follows:

Further direct examination by Mr. Bourne:

Q. Mr. Ormond, when we were finishing up yesterday afternoon, you were discussing Atlantic Coast Line Railroad Company's Exhibit 3. Had you finished any explanation of that, which you think was necessary? A. No. There are several other points in regard to this exhibit which I would like to point out.

It begins with the year 1943. The reason for that is that effective with 1943, the Interstate Commerce Commission required the railroads to inaugurate depreciation of [549] certain classes of road property, which precipitated a change in accounting, which would make maintenance expenses for 1943 not comparable with those for prior years.

Therefore, I started with 1943 for that reason.

The figures are unadjusted. There have been no adjustments made in these figures for rail program or anything else, except to the extent that the exhibit shows that non-cash items were deducted.

BLEED THROUGH

I want to make it plain that this exhibit is not presented as a precise comparison of maintenance expenses. That's nearly always impossible between the different railroads.

One of the principal items—or, one of the principal reasons for that is that maintenance expenses are cyclical, and the circumstances may not conform on the two railroads or groups of roads you are seeking to compare.

Another reason in this particular case, and on the measurements which I have applied, is that revenue is a factor —total revenues, that is, and then, total operating expenses. They may fluctuate in different ways on different railroads with the result that you cannot develop an absolutely precise comparison.

And, a further reason is that maintenance expenses, generally speaking, consist of two elements.

One, is the regular day to day cost of maintaining a railroad and the equipment.

[550] The other one is the charges which, under the Commission's classifications, lodge in maintenance expenses in connection with any program of rehabilitation or improvement which may be under way.

The yearly figures that are shown on Sheets 2 to 6, may be seen in summary form on Sheet 1.

What I have just said about the characteristics of maintenance expenses between the different railroads, are illustrated at that point.

Just to touch on the subject rather briefly, you will observe that all cash maintenance, which, for maintenance —which is the third column, and the sixth column on the statement—the third column being the expenditures per dollar of revenue, and the sixth column, the expenditure per dollar of expenses; operating expenses.

In 1943, Coast Line was running slightly below Florida East Coast, and both of those roads were running below the Southern Region.

The same thing is true in 1944.

But, in 1945, Coast Line jumps up higher than either the Florida East Coast or the Southern Region, and it stays that way through 1949, except that in 1949, on an operating expense basis, Coast Line was very slightly below either the Florida East Coast or the Southern Region.

In 1950, Coast Line was below the Florida East Coast, [551] but above the Southern Region on an operating revenue basis.

The same thing was true on an operating expense basis.

For the first ten months of 1951, which is the last group of figures, Coast Line was substantially above either Florida East Coast or the Southern Region on an operating revenue or an operating expense basis.

I will, later, in connection with the next exhibit, develop that 1951 situation a little further. I refrain from doing it because these figures are for the first ten months of that year only. Those were as late as those figures could be obtained for the Southern Region.

I have obtained them and will later present them for Florida East Coast and the Coast Line for the full year 1951.

Q. You have also prepared a proposed exhibit entitled, "Maintenance Expenses Recomputed—A. C. L. R. R. Co. and F. E. C. Ry. Co., Years 1943 to 1951, Inclusive"? A. Yes, sir, I have.

Q. And what were the sources of the figures on that exhibit? A. Well, for the years through 1950, they came from the preceding exhibit, Exhibit 4.

For the year 1951, they are——

Q. Exhibit 3, Mr. Ormond. A. Exhibit 3, yes. For the year 1951, they are detailed [552] on the second sheet of the exhibit we are now discussing.

Q. Were they prepared under your supervision? A. They were.

Q. On the first page of this proposed exhibit, in the explanatory notes, one and two, there is a ..... for a

BLEED THROUGH

reference to another exhibit. What is the correct number to put in there? A. Exhibit 3.

Mr. Bourne: I offer this "Maintenance Expenses Recomputed—A. C. L. R. R. Co. and F. E. C. Ry. Co., Years 1943 to 1951," as Coast Line's Exhibit No. 5.

The Court: All right.

. . . The instrument last above referred to was received in evidence and filed as Coast Line's Exhibit No. 5.

The Court: What about No. 4?

Mr. Bourne: No. 4 was a little memorandum I had on valuations that I handed up the first thing this morning.

The Court: I don't seem to have it. Oh, I see. You are going to call that No. 4. This present one will be No. 5.

Mr. Bourne: Do you have one?

The Court: No, I have them. I put them in another place in my file.

By Mr. Bourne:

Q. Mr. Ormond, will you please explain Exhibit 5 briefly? [553] A. I should like to deal first with the second sheet of the exhibit which applies to calculations, separately, for the Florida East Coast and the Atlantic Coast Line for the full year 1951, in the same manner as they were made for the ten months of 1951, in Exhibit No. 3.

So far as maintenance of way and structures expenses are concerned—or rather, let me deal with the total maintenance.

The cents per dollar of operating revenues spent by Coast Line in 1951, were 32.34.

Florida East Coast, they were 27.45.

Making the measurement or basis of total operating expenses, the figures for total cash maintenance, 42.49 cents for the Coast Line, 36.09 cents for Florida East Coast.

I emphasized those comparisons because of the significance that seems to have been attached to certain curtailments in program work by Coast Line in 1951, and would merely suggest that any curtailment is contingent on or upon the service which you are curtailing. I think these figures demonstrate that despite curtailment, Coast Line was expending a substantial part of its revenue dollars throughout 1951, for maintenance of its property.

Reverting now to Sheet 1 of the exhibit, I want to explain that the calculations that are here shown are again not presented as precise figures—

Q. Can I interrupt, Mr. Ormond? There are two other [554] blank places on Exhibit 5, where the blank reference to another exhibit should be Exhibit No. 3, are there not? A. Yes, sir.

Q. Up in the upper left-hand corner and the middle of the left-hand side of the page? A. That's correct. That should be exhibit 3 in each instance.

What I have here done, is to take the calculations from Exhibit 3 and reverse them. In other words, I have computed what the F. E. C.—Florida East Coast cash maintenance would have been in each one of these years had the property been maintained to the extent of the same cents of the Florida East Coast revenue dollar as was spent by the Coast Line.

I have also made that computation on the basis of the cents of the operating expense dollar of Coast Line, applying the Coast Line expense to the Florida East Coast.

Then, in the lower half of the statement, I have reversed that procedure and applied the Florida East Coast expense to Coast Line's, separately, for computations on the basis of cents of each dollar of revenue and cents of each dollar of expenses.

Over at the extreme right, in the total column, and going back to the first section of the statement, it is shown that had the Florida East Coast spent during these nine years, on the same level as Coast Line spent, based on the revenue

BLEED THROUGH

[555] dollar, they would have spent $7,423,960 more in maintaining that property than they did spend.

They would have spent on the same service, from an operating expense dollar standpoint, $4,370,322 more.

Going down to the latter part of the statement, had Coast Line's maintenance expenditures been based on the Florida East Coast expense, from a revenue dollar standpoint, they would have spent $35,786,382. less in the nine years, and on the operating expense basis, $23,592,909.

Now, I want to make it very clear that this statement does not purport to show that the Florida East Coast should have spent those sums, more, or that the Coast Line should not have spent the sums which it appears to be in excess.

This is merely an indication of the level of maintenance on the two railroads, measured by these yardsticks.

There are other yardsticks. Generally speaking, a great deal of attention is paid to the maintenance ratio, and in referring to cents per each dollar of operating revenues, I am simply using another term for maintenance ratio, except also that in my figures I have eliminated non-cash items so as to put the comparisons on the basis of the actual expenditures.

Q. Well, you have made that reservation very clear, Mr. Ormond. Do you think that the inference can fairly be drawn [556] from Exhibits 3 and 5, that the Atlantic Coast Line's maintenance expenditures in 1951 are not subnormal? A. I think it could be very clearly drawn, in fact I think it could be shown that they are considerably above normal because of the large program which the Coast Line has under way and has had under way since the latter part of '43.

Q. A capital improvement program, so-called, can involve very large charges to operating expense, classified as maintenance, can it not? A. It is inevitable, and it will do so, particularly when it relates to track.

Q. That of course, was the occasion for the making of the rail adjustments in the Florida East Coast income account, was it not? A. Exactly.

Q. Is it also a fair inference that relatively, the Atlantic Coast Line spent more for maintenance in 1951 than the Florida East Coast? A. Measured by these factors and these indicators, yes, definitely more.

Q. And is that also true of the years 1946, '47 and '48? A. Yes, sir.

Q. But in 1949 and 1950, indications are that the Florida East Coast spent relatively more, is that right? [557] A. That's right, although they were very close to parity.

Q. And in those years, very large adjustments had been made by the Commission with respect to the maintenance expenditures on the Florida East Coast, resulting from the rail program, is that right? A. That's true. There is another significant point and that is both of these railroads, measured by these yardsticks in the past few years have been spending substantially more than the Southern Region averages.

Q. Have you prepared a proposed exhibit entitled, "Comparison of modifications suggested in Florida East Coast Railway Co. income available for fixed charges and federal income taxes, year 1951"? A. Yes, sir.

Q. Is that simply a tabulation made for the information of the Court and the parties, based on documents already in evidence? A. That is true. I have one comment I would like to make about it if I might.

Q. Well, let me ask you first, whether my understanding of it is correct. That the $2,637,358, is the amount reported by the Trustees. A. That is true.

Q. And the deductions suggested by A. C. L., which appear on Atlantic Coast Line Exhibit 1, would reduce that amount by $218,163. Is that correct? And the addition suggested [558] by the Lynch interests would increase the reported figure by $269,964? A. That is true.

BLEED THROUGH

Q. Now, among the deductions suggested by the Coast Line, is one Mr. Bickley made, one hundred and fifty-four thousand dollars, which was the interest on the tax refund referred to in this exhibit as $153,340—did he not? A. That is correct.

Mr. Bourne: I offer that in evidence as Coast Line's Exhibit No. 6.

. . . The instrument last above referred to was received and filed in evidence and marked Coast Line's Exhibit No. 6.

By Mr. Bourne:

Q. You said you had a comment you would like to make, Mr. Ormond. A. I merely want to point out that the adjustments the Atlantic Coast Line suggested are those which result from a desire to exclude from income items which would not appear in a reorganized company.

On the other hand, the additions suggested by the Lynch interests are simply adjustments that might fall in any year and depending on the circumstances in any company.

Q. Have you prepared another proposed exhibit entitled, "Florida East Coast Railway Company, Average of Earnings Available for Fixed Charges and Federal Income Taxes"? [559] A. Yes, sir.

Q. Is that simply a tabulation prepared from the sources noted at the bottom of the proposed exhibit? A. Yes.

Mr. Bourne: I offer it in evidence.

The Court: It will be received.

. . . The instrument last above referred to was received and filed in evidence and marked Coast Line's Exhibit No. 7.

[560] By Mr. Bourne:

Q. Did you also prepare a proposed exhibit entitled "Calculation of approximate amount of cash which the

holders of the Florida East Coast Railway Company First and Refunding Mortgage Five Percent Bonds would have received (in addition to the $4,000,000, of cash payable by Atlantic Coast Line Railway Company), if the Fourth Plan had been consummated as of December 31, 1951"? A. Yes.

Q. And, that is based on the Atlantic Coast Line's interpretation of the Plan, the Fourth Plan and upon Lynch's Exhibit 28-A, which contains a balance sheet as of December 31, 1951; is that right? A. That is right.

Q. There is a footnote—there are two footnotes qualifying the calculation, but amending or correcting it. I assume the amounts involved are relatively small. A. Yes, they are, not large.

Q. Have you calculated how much——

The Court: We don't have an Exhibit 8. Did you intentionally skip 8?

The Witness: This is 8.

The Court: The one you are talking about now is marked 9 here with me.

Mr. Bourne: I skipped it by mistake, your Honor. I [561] just skipped it by mistake. I have it here.

The Court: What do you want to do?

Mr. Bourne: Why not mark this 8, and I will call the other one 9.

The Court: Mark the present one 8?

Mr. Bourne: Yes, sir.

The Court: All right.

Mr. Bourne: I am sorry.

By Mr. Bourne:

Q. Have you made any calculations as to how much the cash distribution would amount to, per bond? A. I think it is about 165 or 166—163, it is. I beg your pardon.

Mr. Turney: 163?

The Witness: Yes.

BLEED THROUGH

Louis F. Ormond—Recalled—Direct.

By Mr. Bourne:

Q. You also prepared a proposed exhibit of 7 sheets, entitled, "Summary comparison of (1) the unification plan of reorganization approved by the Commission, (2) the hypothetical plan of internal reorganization referred to in the Commission's reports, and (3) the St. Joe Paper Company's Plan". A. Yes, sir.

Q. Are the sources of the various figures which were used therein stated, or explained in the exhibit itself? [562] A. They are.

Mr. Bourne: I offer that exhibit in evidence.

. . . The instrument last above referred to was received and filed in evidence and marked Atlantic Coast Line's Exhibit No. 9.

By Mr. Bourne:

Q. Now, as indicated in the sub-heading on the first page, does that exhibit report a calculation of the contributions which the Florida East Coast creditors would make, and the benefits which they would receive in interest and in the equitable ownership of earnings under the three Plans to which I have just referred, assuming, first, earnings as in the calendar years 1950 and 1951, and, two, earnings in the future normal year as forecast by the Commission, and applying various federal income tax rates, the various contributions and the benefits being expressed in amounts per one thousand dollar bond? A. That is correct.

Q. Now, in this exhibit, is the four million dollars of cash payable under the Fourth Plan taken into account at all? A. Not at all.

Q. In other words, this exhibit has the same result as if there were no cash payment whatever, is that correct? A. That is correct.

Q. Now, it is true, isn't it, that under the Fourth [563] Plan, $588,000 of First Mortgage Bonds, and three hundred some odd thousand dollars par value of common stock will

go to the unsecured creditors and that the holders of the First Refunding Mortgage Bonds, to which we have referred usually as the 5% Bonds, would themselves share, to some extent, in the total allotment for the holders of unsecured claims? A. That is my understanding.

Q. You have not taken that into account here? A. Not at all.

Q. Your theory being that for the purposes of the comparison, it may reasonably be assumed that unsecured creditors will come out about the same under any one of the three plans involved? A. That is correct. The amounts were not sufficient to distort these comparisons, in any event.

Q. Now, how have you treated the new four percent cumulative participating convertible preferred stock? A. You mean, under the Fourth Plan, of course?

Q. Yes, under the Commission's Fourth Plan. A. I have treated that just the same as common stock, because it has the same rights in participation in the earnings, whether distributed, or not distributed.

Q. In other words, this exhibit doesn't reflect any attributes or rights that the preferred stock has which makes [564] it superior to the common stock? A. No, no.

Q. Now, will you briefly state what exhibit 9 shows? A. Well, taking up, first, the Fourth Plan—I suggest that we turn to sheet 2.

Q. All right. A. (Continuing) In item 1, and sub-head A, I am dealing with income available for income taxes and fixed charges, and sub-head A sets forth the contribution of the Florida East Coast. Those figures come from Exhibit 1 of Atlantic Coast Line, as to the years 1950 and 1951. The figures shown for the future normal year come from the Commission's Fifth Report.

The next item is to add to that figure one-half of the projected savings expected to result from consolidation shown in the Commission's Fifth Report. That produces the figure that I here treat as the gross contribution of the

BLEED THROUGH

Florida East Coast in the way of income available for Federal income taxes and fixed charges of the unified enterprise.

Item "B" under this heading 1, deals exactly in a similar way with the contribution of Atlantic Coast Line. Here, the figures of the 1950 and 1951 columns have their origin in Exhibit 2, and, again, for the future normal year in the Commission's Fifth Report, the total of the contributions between the two companies is summed up and shown at the bottom [565] of item 1.

Item 2 attempts to deduct the fixed charges and again I separate the fixed charges by those which will be contributed so to speak, between securities to be issued under the plan to the Florida East Coast Bondholders and the securities which already exist in the Atlantic Coast Line corporate set-up. Those are shown in detail. I don't believe that that requires any material explanation, except that I might refer to the fact that the equipment obligations shown under Item 2(c) for the Florida East Coast are explained in note 4, which appears on sheet 4 of the exhibit. These are actual for 1950 at $125,740, and for the year 1951 and the future normal year are estimated on the basis of equipment obligations outstanding November 30, 1951.

Getting down to item 2(d), the Coast Line's contribution to fixed charges, the figures are actual for 1950, and '51, and for the future normal year represent the amount estimated for 1952. That is explained in note 5, on sheet 4. The total of the fixed charges contributed by both interests is then summed up, and deducted from item 1 producing the balance subject to federal income tax which I have separated between the contribution of the Florida East Coast and the contribution of the Atlantic Coast Line. In this connection, Note 6, on Sheet 4, relates to dividend income of Atlantic Coast Line and its taxability.

[566] Corporate dividends receivable by a corporation, if not in excess of net taxable income for the year in which received are exempt from Federal Income Tax to the

extent of 85% of the dividends, and that calculation is explained for both years in Note 6.

Q. In these explanatory notes and page references, preceded by the letters "CR", do those mean the Court record pages in Document 938? A. Yes, sir.

Q. That is, they are the page references to the Commission's report as printed in the Court record? A. That is correct.

Q. Now, have you finished with your explanation of page 2? A. Page 2?

Q. Yes. A. Yes. I would like now to turn to page 3.

Q. All right. A. Item 4 is deduction of the Federal Income tax which would accrue on Item 3,—the balance subject to such tax. It is computed at the rates actually in effect for the years 1950 and 1951, and for the future normal year,—it is computed at two rates, first, the rate of 42%, which was effective in 1950 when the case was heard by the Commission, and, second, the rate of 52% which will be the 1952 rate. That is to give an alternate treatment of it.

[567] The tax impact is measured separately for the FEC contribution and for the Coast Line Railroad contribution, and, after deducting this figure, we come to Item 5 which is the balance available for dividends and other corporate purposes of the unified enterprise.

Item 6 is a deduction of the annual dividend of five dollars on a very few shares of preferred stock of Atlantic Coast Line, which is already existing and outstanding,—old preferred stock, and, after deducting that, Item 7 shows the balance available for new preferred stock, new common stock and present stock, and, of course, for other corporate purposes. That figure is shown separately for the years 1950 and 1951, and the normal year, and, of course, for the normal year, it is shown in two separate amounts because of the varying impact of income tax calculations.

At the bottom, in Item 7, I have computed the balance available per share of stock of the unified enterprise. That includes the ninety thousand shares of new preferred, the

BLEED THROUGH

sixty thousand shares of new common, and the eight hundred twenty-three thousand four hundred and twenty-seven shares of the present common stock, or a total of nine hundred seventy-three thousand four hundred and twenty-seven shares.

For the calendar year 1950, that balance would have been, per share, 13.20 cents, and a very large fraction.

For the year 1951, it would have been 13.86½ cents.

[568] For the future normal year, under a 42% tax rate, it would have been $6.37, and over one-half, and under a fifty-two percent tax rate, it would have been 5.81 plus.

Having developed that average, I proceed, in Item 8, to work out what the Florida East Coast creditors would receive the benefit of.

The first item is the interest on the Divisional First Mortgage Bonds, and then the interest on the Divisional Mortgage general income bonds; then, the earnings on stock, one hundred and fifty thousand shares, which includes the ninety thousand preferred at the balance available per share as shown under Item 7.

Those figures are shown in total for Item 8.

Item 9, computes the contribution which the Florida East Coast would make toward the unified enterprise. Here, I take the Florida East Coast income available for Federal income taxes and fixed charges, including one-half of the prospective savings which have previously been shown, and deduct from that, first, the interest on equipment obligations which they would not receive, and the Federal income tax, or a total of seven hundred and twenty-four thousand four hundred and seventy-four dollars in the 1950 column for instance. That leaves a net contribution, again referring to the calendar year 1950, of the Florida East Coast creditors of $1,925,573.00 and similar figures for the other years are shown on the same line.

[569] There is a comparison there at the bottom of Items 8 and 9, if you want to use the gross figures.

Again referring to 1950, the creditors would receive—the Florida East Coast creditors would receive the benefit of the interest and equitable ownership of earnings, of $3,079,306.00. They would contribute $1,925,573.00.

For 1951 they would receive $3,178,509.00. They would contribute $2,022,733.00.

For the future normal year, under a 42% tax rate, and under a 52% tax rate, the figures are shown. I don't suppose it is necessary to read them.

By Mr. Bourne:

Q. Now, the figures—you then have translated those figures, in Items 8 and 9, on Sheet 3, into amounts per one thousand dollar 5% bond, still forgetting about the unsecured claims? A. That is true, and those averages are carried back to Sheet 1, which I will get to later.

Q. Those are shown, the results are shown under Item 10 on Sheet 4, and carried over and recapitulated on Sheet 1; is that correct? A. That is correct.

Q. I would like to see if my understanding of those results, with respect to the Fourth Plan is correct:

In the normal year, whether you use a 42% tax rate or a [570] 52% tax rate, the earnings, the contributions in earning power, and in one-half of the savings of the Florida East Coast creditors, would be just slightly less than what they would receive in interest dividends and claims on undistributed earnings; is that correct? A. That is correct.

Q. Is it fair to suggest this, that that is consistent with the Commission's theory of treatment on the basis of earnings, and a division of one-half of the savings? A. I would say so.

Q. And that is, in turn, based on the Commission's own forecast of the normal earnings of the two railroads; is that correct? A. That is true.

Q. Now, in 1950, the figures indicate that the contribution would be only 42.79 a bond, and the earnings, that is to say, the interest dividends and undistributed earnings

BLEED THROUGH

and share in the undistributed earnings would be 68.43; is that correct? A. That is correct.

Q. Now, what is the explanation of the great disparity between what would happen in the normal year, and what would happen with a year having the 1950 levels, for the two properties? A. Well, obviously the principal explanation of that is [571] the tremendous excess of the actual earnings of the Coast Line over the Commission's forecast, and the relatively small excess of the Florida East Coast earnings over the Commission's forecast.

Q. Was there a small excess in the case of the Florida East Coast in 1950? A. I think there was, yes, after you take in the savings.

Q. Well, the Commission took in savings, too, didn't they? A. Yes.

Q. Actually, 1950 was slightly less than the Commission's forecast, wasn't it? A. Well, I show $2,650,047.00, including savings.

Q. Well, your total would be $2,076,007.00 instead of $2,300,000.00? A. Yes. It depends on whether you want to consider it before or after savings.

Q. What? A. If you want to stick with the bare earnings, yes.

Q. You start with $2,187,547.00? A. Yes.

Q. Now, you have gone through the same procedure with respect to the Commission's hypothetical Plan of reorganization. That is to say, the Plan of Reorganization having the type of capital structure which the Commission says it would approve if it was going to approve any internal plan; is that right? [572] A. That is right. Of course, except here, it is much simpler. You wouldn't have the contribution of the Atlantic Coast Line on the one hand and the Florida East Coast on the other, and, as the exhibit shows what the bondholders would contribute to an internal Plan of that character is obviously exactly what they would receive or become entitled to.

Q. Also, in the case of a plan of that character, you wouldn't have any savings to take into account, would you? A. That is true.

Q. Now, the details of that are all tabulated on Sheet 5, are they not? A. Yes, sir, and carried forward—the result is carried forward to Sheet 1.

Q. Now, Sheet 1 shows, does it not, that the Florida East Coast creditors would fare better at any one of the assumed levels, than they would under the Commission's hypothetical Plan of reorganization? A. You mean they would fare better under the Fourth Plan?

Q. Yes, under the Fourth Plan? A. Yes.

Q. What did I say? A. You didn't say it.

Q. They would fare better under the Fourth Plan than under a hypothetical internal Plan? A. Yes, sir.

[573] Q. The difference would be quite substantial wouldn't it, even in the normal year? A. Yes.

Q. And, what is the mathematical factor that is responsible for that? A. Well, the savings are responsible in part for it, of course.

Q. In other words, if the result, as shown in connection with the Commission's Plan, consistent with the Commission having taken into account the savings, then the showing, per bond, would be more favorable under the Commission's Plan than under the hypothetical Plan where the securities are distributed equally; is that right? A. Under a ratable distribution, I should think almost inevitable. Those savings almost approach one million dollars, as estimated by the Commission.

Q. It is mathematically inevitable, isn't it? A. Yes, I think it is.

Q. And the same would be true—I withdraw that. Then, in the case of an actual year, such as 1950 or 1951 you have two factors, don't you—one is the savings and the other is the difference between the Commission's forecast and the actual results for the two railroads? A. Oh, yes. Of course,

BLEED THROUGH

only one railroad is involved in the Commission's hypothetical Plan.

[574] Q. Well, when you make a comparison between the Commission's hypothetical Plan and the Fourth Plan—? A. Then, you have the other factor entering into the picture.

Q. You have the other railroad's earnings entering into the picture, too, don't you? A. Yes, sir.

Q. Now, in the case of the St. Joe Paper Company Plan, you have used which St. Joe Paper Company Plan,—the one that was filed with the Commission in 1950, under which the present First Mortgage Bonds would be paid off, or have you used the one that has been called the Bondholder's Plan which is attached to the—under the joint objections under which the First Mortgage Bonds would not be paid off? A. I have used the Plan that did not assume that any First Mortgage Bonds would be outstanding and drawing interest.

Q. In other words, that is the 1950 Plan? A. That is the 1950 Plan The First Mortgage bonds are not considered in this tabulation at all.

Q. Now, what you said about the Commission's hypothetical Plan would apply equally to the St. Joe Paper Company Plan if there were a ratable distribution of securities under that Plan; isn't that correct? A. Absolutely.

Q. Now, have you made calculations to show what would [575] happen in a normal year and what would happen in a year with earnings at the 1950 level, and what would happen to the earnings at the 1951 level with the various tax assumptions under the St. Joe Paper Company plan with a non-ratable distribution? That is to say, what would happen to the holders of the $20,000,000.00 of present five percent bonds, who would be entitled to take bonds, and what would happen to the St. Joe Paper Company and the duPont Trustees who would take two hundred and fifty thousand shares of stock and $25,000,000.00 of bonds? A. Yes. Those calculations expressed in terms of a one thou-

sand dollar bond appear on Sheet 7 of the Exhibit, under three different bases. First, for the Bondholder who would take a ratable distribution of stocks and bonds:—that is A, then for the Bondholder who would take all bonds. That is B. Finally, for a Bondholder who would take all stock. That is C. And, the contribution by the FEC Creditors shown down at the bottom under the St. Joe Plan, of course, would be exactly the equivalent of the earnings position of the creditors under a ratable distribution, just as it was in the hypothetical Plan. It would not be the same in any of the other hypotheses that are shown here.

Q. Now, does the exhibit show, at any one of the assumed levels, that the contributions, that is to say, 20/45ths of the earnings and savings would not be as much as the holders of the [576] twenty million dollars of bonds would take out in interest? A. I didn't follow that exactly.

Q. Well, all right. Tell me what it does show with respect to the effect of a non-ratable distribution? A. Well, in a non-ratable distribution, it shows that the contribution is considerably greater than the benefits for a bondholder who would take all stock, and it is slightly—well, considerably smaller than the benefits of the bondholders who would take all bonds, and you can make any number of calculations in between those two extremes you want until you finally get to the ratable distribution, which, of course, would be the same thing.

Q. Now, this whole exhibit treats with the right to receive interest, fixed interest, a right to receive contingent interest, a right to receive a preferred dividend, or a common dividend, or an equitable share in undistributed earnings as if they were actual, doesn't it? A. They are all interpreted with the dollar as the common denominator.

Q. And, without regard to the quality of the claim that the bondholder would have? A. That is given no consideration whatsoever.

Q. Then, it is not fair to assume, is it, that simply because, under the St. Joe Plan, with its non-ratable dis-

BLEED THROUGH

tribution, a holder of a present one thousand dollar bond, who [577] would receive a new fixed interest bond, paying forty dollars ought necessarily to prefer the Fourth Plan merely because, in the normal year, he could get, assuming a normal year, he would get a claim on earnings of more than forty dollars? A. No, that would be a matter for a man to interpret in his own judgment. The quality of his claim, with a 4% fixed interest bond, is superior to the aggregate of the items that are bundled up in the figure under the Fourth Plan.

Q. On the other hand, the quality of the claim of the common stockholder, the man who is to get only common stock, may be inferior to that of the one who is to receive fixed interest bonds, even though the same dollar amount be involved: isn't that correct? A. That might be true.

Q. And, to complete a comparison giving effect to those elements, you would have to consider how much of these various items, which are called earnings of FEC creditors, will be represented by fixed interest bonds, income bonds, preferred stock and common stock: isn't that correct? A. It would, but it would be a complicated matter to do it.

Q. Well, an element in weighing the relative treatment under the Plans is the calibre of the securities, as well as the dollar amount of the claims on earnings? A. Unquestionably.

Q. Is that correct? [578] A. Unquestionably. But, the calibre may remain, and the earnings may not.

Mr. Bourne: That is all.

The Court: Any cross examination?

Mr. Turney: Yes, sir.

Cross examination by Mr. Turney:

Q. Mr. Ormond, would you state what the nature of your duties were with the Atlantic Coast Line? A. Now?

Q. Yes. A. I have supervision over the accounting department.

Q. And, what is your title? A. Vice-President.

Q. Have you got anything tagged onto that title, or is it just plain "Vice-President"? A. Well, vice president dash accounts.

Q. Do you participate in the financial affairs of the company? A. I am not a financial vice-president, if that is what you mean. My duty is primarily concerned with the accounting department.

Q. Do you give advice to the Board of Directors, the President, or the Executive Committee, with respect to financial [579] matters? A. Not regularly, no.

Q. Well, do you give advice? A. I should say, no. My opinion may be asked on some special matter, and I give an opinion on it, but as to regularly participating in advising the Executive Committee or the Board, I would say, no.

Q. Now, going through your exhibits rather rapidly, your Exhibit No. 1 for both years differs from the adjustments made by Mr. Bickley for the year 1951 only by the so-called Gordon adjustments of some $270,000.00, and the item of deposit of cash; is that correct? A. Well, I haven't made that comparison, Mr. Turney. I am perfectly willing to accept that.

Q. Now, on your Exhibit 2, the earnings of the Atlantic Coast Line for the years 1950 and 1951. Do you regard either or both of those years as typical of the earning power of the Atlantic Coast Line? A. Speaking for the future?

Q. Yes, sir. A. I definitely do.

Q. Do you think that they understate or overstate the future year? A. Well, of course, any one that is making a prediction as to the future, with times like they are now, must need have [580] a crystal ball, but, with the development in the territory served by the Atlantic Coast Line, the heavy industrial development that is reaching the tidewater regions, unless some cataclysm comes along, of which I have no knowledge, I see no reason why the Atlantic Coast Line shouldn't go further.

Q. And, increase the earnings shown on your Exhibit 2? A. Well, now, when you get to the earnings, you are dealing with what might be imposed upon, not only the Coast Line, but on any other railroad, in the way of labor restrictions or something,—well, I think the future of the Atlantic Coast Line from an earnings standpoint is bright.

Q. Certainly no darker than shown by these two years? A. Well, we have had—I would rather not express myself on that. I am not a traffic man. You had better get a traffic man on the stand for that, Mr. Turney.

Q. Mr. Ormond, do you regard the earning shown for the years 1950 and '51 for the debtor as typical or normal for the future on the Florida East Coast Line? A. Well, I am just not in a position to express an opinion about the Florida East Coast. I agree with the Commission that it is handicapped in many respects by its physical location, and by the fact that heavy industry, according to my limited understanding, is not developing as rapidly on the East Coast as perhaps it is in the Carolinas [581] and Georgia, but my opinion would be of very little consequence. I just don't know.

Q. You do not offer exhibits 1 and 2, then, to show the relative earning power in the future for these two roads? A. I offer exhibits 1 and 2 to show what has happened in 1950 and 1951 in contrast with the predictions of the Commission as to a future year, and that prediction being made before 1950 was closed.

Q. Now, that prediction made by the Commission was made largely on evidence introduced into the record by your testimony, was it not? A. Well, I don't think so. I contributed something to it, but I think the Trustees put in figures for the Florida East Coast. As far as the Atlantic Coast Line is concerned, perhaps, yes.

Q. That is what my question was intended to be limited to, to the Atlantic Coast Line, sir. A. Well, the Commission didn't adopt all of the things that I thought they should in that report as regards the Atlantic Coast Line.

Q. There was very little, wasn't there, Mr. Ormond, that they didn't adopt? A. Well, I think the report will speak for itself in that respect.

Q. Well, now, let us turn the cases around. The [582] Commission's estimate of 1950 of the Atlantic Coast Line earnings, according to these figures for the years 1950 and 1951, was approximately half of what the company actually did in those years; is that right? A. Yes, sir.

Q. Now, let us assume that this proposal came to you as Chief Accounting Officer, and you were asked by your Board of Directors to make a recommendation under the circumstances: That the Pennsylvania Railroad was acquiring the Atlantic Coast Line on the estimate in 1950 of the Commission,—of the Atlantic Coast Line earnings, could you conscientiously advise your directors to accept such an offer? A. Well, I don't know about a hypothetical question like that. I just prefer not to answer that at all.

Q. I will take that as an answer, sir. A. All right.

Q. Now, would you turn, please, to your Exhibit No. 3. A. Yes, sir.

Q. I believe you have stated that this was not intended as a precise comparison, but that it was based primarily on revenues, and that there were differences in the kind of revenues and the service from which they were received; that there were seasonal fluctuations in the revenues, and sometimes slight fluctuations, and that there were other yardsticks which are also used which are meant to measure mainten-[583]ance of way and equipment expenditures. Did I state your evidence correctly? A. No, sir, not at all.

Q. Will you correct what I said? A. It is a little difficult, but you emphasize that I said something about different kinds of revenue. I never mentioned that. I mentioned different levels of revenue. I mentioned nothing about seasonal fluctuations.

Q. You mentioned fluctuations, did you not? A. Annual fluctuations. My point is this, Mr. Turney: I would like to make it clear, if you don't mind. If you have the same level

of maintenance in two years, but your revenues have gone up twenty-five percent in one year as compared with another, your calculations would look entirely different. That is what I meant to state.

Q. Now, what are some of the other yardsticks that you did use to measure maintenance of way? A. Well, a commonly used yardstick is mile of track. Sometimes equated. To give recognition to branch line and subsidiary tracks, some people use a mile of road. I don't think either one is of the slightest significance in a comparison between two roads like the Florida East Coast and the Atlantic Coast Line, because the wide difference in the characteristics of the tracks of the two roads just makes such a comparison completely futile.

[584] They do have one thing in common and that is dollars of revenue, and that is the reason I used it.

Q. Isn't it also true, Mr. Ormond, that the revenues on any comparable basis per mile of road, equated track mile, per train mile, or any basis, of the Florida East Coast, will run from twenty to forty percent higher than the revenues of the Atlantic Coast Line? A. I don't know anything about your percentages, Mr. Turney, but I do know that, in a general way, that the Florida East Coast has a rather high revenue per ton mile, per mile of road, or by almost any other measurement you want to measure it by.

Q. Now, isn't it also true that the proportion of passenger revenue on any basis, on any basis of total of the total revenue, is much higher on the Florida East Coast than it is on the Atlantic Coast Line? A. I simply haven't made that calculation. I don't know. I know it is high on the Coast Line. As to whether the Florida East Coast is higher or not, I don't know.

Q. You can't answer that question? A. No, sir, I can't answer that question.

Q. Now, if the revenues, on any comparable basis, of the Florida East Coast, any unit basis, are substantially

in excess of those of the Atlantic Coast Line, does not that difference greatly overstate the maintenance obligation, [585] either way or equipment, of the Florida East Coast compared with the Atlantic Coast Line when you attempt to measure it in dollars of revenues or expenses? A. I don't see why it would affect your expenses. Of course, I don't for a moment agree that your proposition is right. I don't know whether it is right or not. If, what you say is true, the result would be that the Florida East Coast maintenance expenses per dollar of revenues would be relatively lower than the Coast Line, unquestionably. I pointed out in direct examination that that is one of the deficiencies in a calculation of this kind.

Q. Well, now, did you make the calculation, taking, first, maintenance of way, with respect either to per mile of road, or per equated track mile or per track mile? A. I don't recall whether that was made or not. I know I didn't make any equated track mile calculation because I haven't the slightest confidence in them, and I doubt if there was a per mile of road calculation made. I may have, Mr. Turney, but what they are, or where they are, I have no idea.

Q. You say you have no confidence in an equated track mile basis? A. None whatever.

Q. Isn't it true that the rail adjustment which you finally put in in this case, and which is accepted in the Commission's report were based upon an equated track mile? [586] A. Yes, of course, it was. There is no inconsistency there. We are talking about maintenance here, not about renewing rail.

Q. Is renewing rail not maintenance? A. No, it is part maintenance and part capital.

Q. As a matter of fact, sir, the capital expenditures were relatively very small on both the Coast Line and the FEC, weren't they? A. No. It was 31/131st on the Coast Line, for the most part.

Q. Now, if—let me ask you this: You have seen comparisons of the Coast Line and the Florida East Coast of

BLEED THROUGH

maintenance of way per mile of road and maintenance of way per equated track mile, have you not, in this proceeding? A. If I have, I don't recall it, Mr. Turney.

Q. Well, let me ask you this: Will you say that this statement is not true, that in every year since 1936, with the possible exception of one, that the maintenance of way expenditures of the Florida East Coast per mile of road or per equated track mile were substantially, and, I mean by substantially, as much as thirty or forty percent in excess of the similar expenditures on the Atlantic Coast Line? A. I wouldn't say either yes or no on that, because I just don't know. I don't recall.

Q. Now, let us move over to maintenance of equipment. A. All right.

[587] Q. Have you ever examined to determine the relative importance of car hire on the Florida East Coast and the Atlantic Coast Line? A. No, not in a number of years, anyhow.

Q. Now, if most—strike that question. It is a fact, is it not, that if a railroad is a heavy debit or debtor railroad in ear hire, that a large part of its maintenance, of what would otherwise be maintenance expenditures, are in equipment rents; isn't that true? A. I wouldn't say how large a part. Probably a considerable part of it is.

Q. Well, now, if it is true, and I ask you, for the purposes of this question, to accept it as true, and to take my word for it that the ownership of freight cars on the Florida East Coast is relatively much lower than it is on the Coast Line, and that the debit position of the equipment rent account is relatively much higher on the Florida East Coast than it is on the Coast Line, won't you agree that, in order to compare the maintenance of way expenditures of those two properties, that you must consider, with respect to both, not only the maintenance of way expenditures, but also the equipment rents? A. Mr. Turney, you referred to maintenance of way twice. I think you meant maintenance of equipment.

Q. I am sorry. I always say maintenance of way when I [588] mean maintenance of equipment. A. Under the circumstance that you recite, I should say that the car hire, as to maintenance expense relating to freight cars, should be given some consideration, yes.

Q. Now, that brings me to this question: Is it not true that in order to fairly or accurately measure maintenance of equipment expenditure between two railroads where there is a vast difference in the relative proportion of freight and passenger service, that you must consider those two services separately because of the radically different types of equipment that is to be maintained? A. In the first place, I don't think there is that vast difference between freight and passenger services.

Q. You say you don't think so? A. No, I don't think so.

Q. Have you ever checked it? A. Well, not recently, no.

Q. Well, now, if there is such a difference, will you assume, for the moment, that there is such a difference, will you agree that my statement is correct? A. No, I wouldn't. I won't agree on that. I don't know the extent to which there is an over-weight of necessary passenger repairs, passenger equipment repairs. You are referring to cars, I presume?

Q. Yes. [589] A. (Continuing.) That would produce an increase of maintenance expense.

Q. Mr. Ormond, isn't it a matter of fact that statisticians, in measuring—and I mean railroad statisticians, in measuring maintenance, relative maintenance of equipment, either separately by freight and passenger service and freight and passenger equipment, or if they attempt to measure them together, that they measure them by gross ton miles, including the locomotive and tender. A. And passengers?

Q. Yes. A. Well, if you are going to try to measure them together——

Q. Will you please answer my question and then you can explain your answer. A. It is difficult to answer yes or no, Mr. Turney. I am trying to answer it the best I can.

BLEED THROUGH

Q. Very well. A. In trying to separate freight and passenger services, in maintenance of equipment, you run into a lot of very serious difficulties. In assigning your shops and overhead and everything else to the two services, I haven't too much confidence in the result. In trying to measure it collectively for both freight and passenger, you avoid those pitfalls and run into others. I have seen it attempted by trying to work it out on a gross ton mile basis, assigning arbitrary [590] weight to the passengers in the car. There, again, I haven't too much confidence in them.

Q. You know that that is a statistic that the Interstate Commerce Commission and that Dr. Parmalee makes very frequently? A. Yes, I have seen it.

Q. And, Dr. Parmalee is the official statistician for all of the railroads, including the Coast Line and the East Coast? A. Yes, he is the statistician for the Association of American Railways.

Q. And, he is one of the outstanding railroad statisticians in the county? A. Unquestionably.

Q. Now, if—strike that question. Strike the "if". Do you know, or have you made the calculation that if you relate the maintenance of way expenditures—— A. Way?

Q. Thank you. I am sorry.—maintenance of equipment expenditures of these two properties, separately, by freight cars, freight car mile basis, per car day basis, if you want to, locomotives on gross ton mile basis, or locomotives mile basis, if you want to, and passenger cars on a per car mile basis, or a gross ton mile basis, that any of those unit yardsticks will show that over the past sixteen years, the [591] Florida East Coast expenditures for maintenance of equipment uniformly has been higher than that of the Coast Line? A. To answer your question, I have never made the calculation, and, to answer it further, I never would, because I don't think anything worked out over the past sixteen years is of much significance for the present.

Q. Well, then, if that statement is true, sir, and, I assume when you said over the past sixteen years you mean over any part of it—— A. Not necessarily. I mean, as far back as sixteen years, including the war period and depression, and all that, I don't think that has any significance.

Q. My question is—my question wasn't for the whole period. It was for every year in the period, with the possible exception of one. I think my question was clear. A. Well, if you made it clear, I don't understand it.

Q. I am making it clear now. Please answer the question. A. I have not made calculations, and I would not know, and I would have some doubt of it.

Q. You haven't seen similar calculations that have been made in this record on that basis? A. (Continuing) For the reasons I have just explained, calculations like that made in this record, I wouldn't attach a great deal of importance to them.

Q. They didn't look very good from the standpoint of the [592] Coast Line, did they? A. They didn't look very good from the standpoint of statistics.

Q. Now, going to your Exhibit 5, if you will, sir. Is this a correct statement—and then we can pass from the exhibit—that if there are infirmities in your statistical comparisons in Exhibit 3 of the nature which I have pointed out, exactly the same infirmities apply to your Exhibit 5, because it is predicated upon the percentage of the maintenance ratios shown in Exhibit 4—3—I am sorry. A. Oh, yes, I presume that would be true, but I don't want to seem insistent about this maintenance proposition, but, if you have no objection, I would like to point out again that the 1950, '51 comparison was the feature of this exhibit, which I particularly emphasized, and, in that comparison, we find Coast Line with a very much larger increase in railway operating revenues than the Florida East Coast; nevertheless producing a higher average expenditure per dollar of revenue for both types of maintenance. That was directed toward the point of the reductions which have been made in Coast Line maintenance expenses.

Q. Would you be surprised to learn that compared on an equated track mile basis in 1950, the expenditures of the Florida East Coast Railroad were four-eight-one-six per equated track mile, and those of the Coast Line were three-two-four-ought? [593] A. I wouldn't be surprised, Mr. Turney, at any result that an equation produced. It depends on who is doing the equating.

Q. You used the same equator that resulted in reducing the earnings of the debtor in the Commission's normal year, by over a half million dollars, didn't you, Mr. Ormond? A. I don't know whether it was the same one or not. I know you objected very seriously to it at the time.

Q. Wasn't that because you hadn't used all the miles on the Coast Line, and you went out and corrected it first? A. I don't remember that.

Q. I didn't think you would. Now, with respect to the maintenance on both way and equipment in the year 1951, was your exhibit intended to modify, explain, refute or repudiate the testimony given by Mr. Davis, your president, before the Interstate Commerce Commission in January of this year and in May of last year? A. It was not intended to do either of those things. It was just intended to throw a little more light on a subject which seemed to be emphasized before this Court.

Q. Well, do you know an officer of the Coast Line by the name of Trundle? A. Yes, sir.

Q. To whom does he report? A. To me.

[594] Q. Is it not true that, in January of this year, Mr. Trundle, as your assistant, and under your direction, introduced an exhibit and testified before the Interstate Commerce Commission in Docket Ex parte 175, in which he showed that there was a difference, if I recall the figure correctly, of between eight and ten million dollars between Basis 6, the actual 1951, as estimated, and Basis 8, the estimate of 1951,—not 1952—of 1951, as it would have been if you had not curtailed your maintenance? A. I don't

recall the figures, but that is quite true, basically, what you say,——

Q. And,— A. Just a minute.

Q. Go right ahead. A. —and nothing I have said here today is intended to, and, I hope, doesn't contradict any of that. My point is, that despite those curtailments, the magnitude of the program which the Atlantic Coast Line has under way, and has had under way for years, still left their maintenance expenses at a high level.

Q. Well, now, Mr. Ormond, do you mean by that answer that that program was primarily an addition and betterments program, or do you mean that it was one primarily of operating expenses? A. As I explained in my direct testimony, you don't have [595] an addition and betterment program, particularly in relationship to roadway, without having an operating expense program along with it.

Q. I understand that, sir. But, now, will you answer my question, please? A. I should think that would answer it. It was a program to rehabilitate and recondition the property.

Q. Very well. A. (Continuing) And, to improve it.

Q. That would—? A. They are all tied together.

Q. They are all tied together? A. Yes, sir.

Q. Now, wasn't that rehabilitation brought about by the deferred maintenance from 1936 to 1942? A. To some extent, unquestionably, but, over and beyond that, Mr. Turney, the program which the Atlantic Coast Line has had under way, definitely, in my opinion, is intended to move the Atlantic Coast Line's physical condition up and beyond what it has ever been in its history, and I don't mean from the standpoint of maintenance, but I mean from the characteristics of the plant.

Q. In other words, improving it? A. We were stepping ahead——

Q. But also taking some steps to make up for some that [596] you didn't take over the past years? A. Why,

of course, you couldn't get the things to do your maintenance with during the war. Of course, we had to recover some of that, but that program primarily, while termed rehabilitation and improvement program, I would lay emphasis on improvement rather than rehabilitation.

Q. Now, isn't it true, sir, that all of your computations on your Exhibit 9 with respect to what the FEC creditors would get under the unification program, were based on two things: One, that the years 1950 and 1951, the net earnings, after the maintenance expenditures have been taken out, were normal, typical, and, two, that the Florida East Coast creditors would get an equity or an equitable call, or a hope, or an echo, or whatever you want to call it in the amount of earnings that the company, the Coast Line, retained and transferred to surplus? A. Well, answering the first part of it, I wouldn't say that is all. This Exhibit 9 is designed to present the results for the calendar years 1950 and 1951 as they took place, and contrast them with the Commission's estimated normal year.

Now, there is no conclusion in this as to what would be a future normal year, whether it would be 1950 or 1951, or what the Commission said the figures were. He who runs may read, and I don't know anything I have testified about, in connec- [597] tion with this exhibit that would justify your interpretation of it,——

Q. You know— A. Let me finish.

Q. Excuse me. A. Now, as to No. 2, what you say is true. This whole exhibit is founded upon the fact that the Florida East Coast creditors, under the Commission's Fourth Plan, would have an equitable interest in the undistributed earnings of the unified enterprise.

Q. Isn't it also true that if, for some unhappy reason, the Atlantic Coast Line should go into reorganization or bankruptcy, that that equitable interest would be wiped out insofar as the ninety thousand shares of preferred is concerned? A. Yes, but, of course, the preferred would also, in that sad event, have a claim on whatever assets

were available, and it would be in a far better position than the sixty thousand common.

Q. Would that necessarily be true? Wouldn't any type or reorganization under the terms of that stock wipe out the equity of the ninety thousand shares of preferred who had not converted prior to the date of the reorganization, even though they did completely reissue of the stock? A. You are asking me a legal question, Mr. Turney, which [598] I don't choose to answer.

Q. Very well, sir. One final question, and I hope my arithmetic is good this time. You do not offer this Exhibit 9 for the purpose of showing what the creditors of the Florida East Coast will receive in the future, but merely what they would have received if this plan had been consummated as of January 1, 1950? A. I think the exhibit speaks for itself. I don't think there is any doubt but what the showing in 1950 and 1951, as displayed on this Exhibit, would lead to the implication that future years may be as favorable, but I haven't said so, and I certainly wouldn't, because I wouldn't know.

Mr. Turney: Thank you, sir. That is all.
The Court: Any further cross of this witness?

. . . To which inquiry there was no response.

The Court: Any redirect?
Mr. Bourne: Yes.

Redirect examination by Mr. Bourne:

Q. Mr. Ormond, isn't it a fact that the Atlantic Coast Line has a relatively large proportion of branch line mileage? A. A perfectly tremendous portion. We are doing our best to get rid of it the best we can, where it is no longer profitable.

[599] Q. Does that affect the dollar amount of maintenance expenditures per mile of road? [600] A. Oh, yes, and then, of course, the relative proportion of any two railroads, in double track, affects it, too.

Mr. Bourne: That is all.

BLEED THROUGH

Recross examination by Mr. Turney:

Q. That last remark: the effect of the double track is removed when you equa[illegible], isn't it? It is taken out of the picture? A. It is taken out of the picture if your equation is right.

Q. Well, it is your equation and my equation, and the Commission's equation and the railroad's equation, isn't it? A. Yes.

Mr. Turney: That is all.

The Court: Any further questions of this witness?

. . . To which inquiry there was no response.

Mr. Bourne: Your Honor, I offer the notice with respect to the adoption of the plan to which I referred right at the beginning of the hearing, which has been filed with the Clerk, but I thought it might perhaps be convenient to have a duplicate marked as an exhibit.

The Court: That is what you referred to as the action of the directors and officers?

Mr. Bourne: Yes.

The Court: All right, let it be filed.

[601] . . . The instrument last above referred to was filed in evidence and marked Coast Line's Exhibit No. 10.

Mr. Bourne: The Atlantic Coast Line rests.

Mr. Patterson: We have nothing further.

The Court: The objectors have no further evidence?

Mr. Turney: No, sir, insofar as the St. Joe Paper Company is concerned, we have nothing further.

The Court: What about the other objectors? Have you any further evidence to offer?

. . . To which inquiry there was no response.

The Court: Well, that concludes the evidence, then, I believe. Is everybody satisfied now on the introduction of evidence?

Mr. Bourne: Does that mean that there will be no evidence in support of the motion to dismiss, so that when we address ourselves to the arguments, we can argue with reference to that?

The Court: As to the Bankruptcy petition?

Mr. Bourne: Yes, sir. In other words, I would be interested in knowing whether any evidence, in support of the so-called Bondholders Plan will be submitted, or whether the present record——

The Court: I am advised that no further evidence will be necessary in support of the motion to dismiss. That is based on what has already been adduced, I suppose. Do you [602] gentlemen have any other evidence to introduce on that motion?

Mr. Turney: So far as the St. Joe Paper Company is concerned, we do not have anything further. We are resting on the record.

The Court: Anything else?

Mr. Thomson: There is one thing that troubles me a little. There are a very considerable number of separately signed motions to dismiss by individual bondholders who have not, up to this time, intervened. Now, those are in the possession of the Clerk at present, and the question is, should they be introduced in evidence, or are they a part of the record in front of you as it stands?

The Court: The motion itself is a part of the record proper. It would not be appropriate to put it in evidence. It is not evidence of anything.

Mr. Thomson: Well, the names and the amounts of the bonds, and so forth——

The Court: Well, a motion is a part of the record proper. That is all I can tell you now.

Mr. Thomson: Yes, sir .

The Court: It is in evidence. I don't know what its purport is, or what purpose they are trying to serve by it.

BLEED THROUGH

Mr. Bourne: May I examine that?

The Court: Examine what?

Mr. Bourne: This last that you were speaking of.

[603-4] The Court: Isn't it in the court file there?

Mr. Thomson: It is in the court file.

The Court: It is a part of the court file. Well, I am about to wind up this evidence now, unless somebody else wants to introduce further evidence. If you do, now is the time to say so.

Mr. Bourne: I would like to say this, your Honor. This is an entirely new development to me, your Honor, and I would like an opportunity to examine this, and decide if there is any action I want to take with respect to it. We have here papers signed by, or purporting to be signed by people, which are not authenticated. We have got no evidence here as to how those were obtained. We have a very severe provision in Section 77 about solicitations, and I would like a chance to look at this.

The Court: Well, any assault you made on that would be a matter of law, wouldn't it?

Mr. Bourne: It might be, as a matter of fact, but I would like to find out what the bondholders were told. I would like to find out who got these.

The Court: When were those motions filed? What is the file mark on them?

Mr. Thomson: February 7, 1952.

The Clerk: They have been coming in for the last two weeks or more, daily. They start way back here, Mr. Bourne.

[605] Mr. Bourne: Of course, any creditor has a right to be heard, and I believe that is so, and these men have a right to be heard, but I don't believe anybody has a right to put in papers of this kind, and not give me an opportunity to find out how the signatures were obtained.

The Court: When we get to those motions, I will consider what is to be done then at that time with respect to them. At the present time we are on the question of whether or not the plan proposed is fair and equitable. Now, on that question is there any further evidence to be introduced?

Mr. Bourne: Not by me, sir.

Mr. Butler: Your Honor, so far as I know, there is no more evidence, and, I presume, the next in order will be the arguments of counsel. Am I correct as to that?

The Court: Well, Mr. Adair wants to present something, and that will be the next order of procedure. All right. The Court now declares the evidence to be closed on the question of the fairness and equitableness of the plan. Now, Mr. Adair, was that a request for admissions?

Mr. Adair: Yes, your Honor, but I suggest that it might be well that we present that as a part of the general arguments.

The Court: When you present your main arguments?

Mr. Adair: When we present our main argument, yes, sir.

The Court: All right. I think that is a very good way [606] to handle it.

Well, we will start the arguments then in the morning at ten o'clock. The opening arguments will be on behalf of the objectors, and will follow the same course the evidence has taken. We will go right through all of the objectors to the plan and hear their arguments, and then we will hear those favoring and supporting the plan.

Mr. Howell: I wonder if it would be practical to get a tentative estimate from counsel, now that the evidence is closed, as to how long they think they will need?

The Court: Well, I am a little afraid to call on them for that, Mr. Howell. They might think they need more time.

Mr. Howell: I thought it was possible that they might not take that much time, but might take less.

The Court: I don't think it will be possible to finish the arguments tomorrow.

Mr. Bourne: Sir?

The Court: I don't think it will be possible to finish the arguments tomorrow. I think it is inevitable we will have to go over until Monday. Do you think we can finish tomorrow? I don't think so. I think inevitably we will have to go over until Monday, and I want you gentlemen on all sides of this controversy to understand that it is not incumbent upon you—there is no compulsion upon you to take up all this time requested. You may feel that you are [607] under no obligation to the Court to do that.

We will take a recess until ten o'clock tomorrow morning.

. . . And thereupon the hearing was recessed until ten o'clock A. M., the following day, to-wit, Friday, February 8, 1952.

Motion of St. Joe Paper Company to Vacate Intervention of Atlantic Coast Line Railroad Company.

IN THE

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

St. Joe Paper Company moves this Court to vacate its Order of May 18, 1948, overruling objections to and granting petition of Atlantic Coast Line Railroad Company for leave to intervene in this cause, and as grounds for its motion says:

I.

Atlantic Coast Line is not a party in interest and has no interest in the reorganization of the debtor nor any vested interest in its property which is under mortgage. The issues tendered by the Petition for Reorganization are between the debtor and its creditors. Intervenor was not entitled to come into this suit for the purpose of having adjudicated any controversy solely between it and the First and Refunding Bondholders, for reorganization could not be enlarged by Atlantic Coast Line's intervention, for it was limited "to the field of litigation open to the original parties."

BLEED THROUGH

II.

Atlantic Coast Line's offers and its conduct in this case demonstrate that its interests were antagonistic to those of all First and Refunding Bondholders of the debtor, and that the Order permitting intervention has been used by it to prosecute this bondholder under a claim that it was acting in the public interest when, as a matter of fact, it was seeking to acquire the property of the bondholders for a consideration that would result in obtaining benefits in excess of the cost.

III.

Atlantic Coast Line's intervention has resulted in a trial in this Court of the issues raised by it which resulted in a decision adverse to its claim, a fruitless appeal from the decree to the Court of Appeals, followed by a fruitless application to the Supreme Court of the United States for a writ of certiorari, and further hearings before the Interstate Commerce Commission. Its continued participation will result in a continuance of the litigation at an expense of hundreds of thousands of dollars to the bondholders, a large portion of which has been paid or will be paid out of earnings otherwise distributable to them. It has also prevented distribution to the bondholders of cash earnings of the Trustees by the necessity for reserving and expending funds for improvements and betterments that the bondholders could not have been compelled to pay for. Between the date of the Order permitting Atlantic Coast Line to intervene and the present, there has been expended, under Orders of this Court, for the improvement of the property of the debtor, over $10,000,000, $5,000,000 of which is secured by liens imposed by Court Orders securing reimbursement to them of such expenditures. No protection has been accorded them for the balance of such expenditures.

Coast Line has opposed the granting of all such liens, insisting that bondholders should pay for the improvements which under the former Plan as well as under the one now before the Court, would, if it were affirmed, inure to the benefit of Atlantic Coast Line. The Plan filed by the Atlantic Coast Line at the last hearing, offered millions of dollars less for the properties after they had been improved, than it offered before, and the present Report of the Commission is guilty of the same offense, though in a lesser amount.

Further continuance of litigation with Coast Line will compel the expenditure of additional hundreds of thousands of dollars by bondholders, to protect their property rights against the taking of them for the benefit of Coast Line.

IV.

At the time the Order allowing intervention was entered, the Court stated that its sole reason for granting the Petition of Atlantic Coast Line was that the Commission, by its Third and Fourth Supplemental Reports which have been disapproved as illegal and unfair, provided for a transfer of debtor's properties to Atlantic Coast Line. The Plan of the Fifth and Sixth Supplemental Reports is similar but less beneficial to the bondholders than the Plan of the Third and Fourth Reports. They wholly disregard the law and instructions given to the Interstate Commerce Commission by the Courts, as well as their Orders disapproving the former Plan.

(Signed) GILES J. PATTERSON

(Signed) JOHN R. TURNEY
Counsel for St. Joe Paper Company

Endorsed:

"Filed Jan. 2, 1952, Jacksonville, Fla.

EDWIN R. WILLIAMS, Clerk."

BLEED THROUGH

Petition of St. Joe Paper Company for Entry of Order Imposing Lien in favor of First and Refunding Mortgage Bondholders.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J

Petitioner, St. Joe Paper Company, owner of Twenty-Five Million Dollars of First and Refunding Bonds of Florida East Coast Railway Company, respectfully shows to this Court:

1. Properties of the Debtor were operated by Receivers appointed by this Court from 1931 to January 1941. By order of this Court dated May 12, 1932, the Receivers were required to apply all earnings and income from operation and from assets covered by the mortgage for the benefit of First and Refunding Bondholders subject only to such legal and proper expense as the Court might determine necessary for the operation and preservation of the property and assets.

2. In January 1941, this Court transferred the control and management of the property of the Debtor to Trustees in Bankruptcy who have, since then, operated it under the supervision of the Court of Bankruptcy.

Petition of St. Joe Paper Company for Entry of Order Imposing Lien in favor of First and Refunding Mortgage Bondholders.

3. The annual reports of the Receivers and the Trustees in Bankruptcy for the years 1932-1947, inclusive, show that they have earned a profit from operations available for the payment of fixed charges amounting to $37,509,758. Out of this the Trustees have paid all interest due on First Mortgage Bonds of the Debtor as the same matured, amounting to a total of more than $8,500,000. No payments were made to holders of First and Refunding Bonds prior to the filing of the Petition in Bankruptcy in 1941. Since then the Trustees have paid four coupons on the First and Refunding Bonds amounting to $4,500,000.

4. At the time the Receivers were appointed in 1931, the Debtor did not have sufficient cash to pay its current liabilities; all cash now in the hands of the Trustees, in excess of current liabilities, has accrued from earnings from operations. All net cash earnings, in excess of interest paid and the cost of operation, have been re-invested in the property of the Debtor or are still in the hands of the Trustees.

5. On April 6, 1942, the Interstate Commerce Commission proposed a Plan of Reorganization and held that owners of First Mortgage and First and Refunding Bonds of the Debtor were entitled to receive all securities issued thereunder because the value of the Debtor's property was less than the amount owing on its mortgages.

6. On October 19, 1943, this Court disapproved that Plan of the Commission and referred it back to the Commission. In an opinion rendered simultaneously, this Court advised the Commission that net cash earnings should be distributed to the secured creditors or expended for their equitable benefit.

BLEED THROUGH

Petition of St. Joe Paper Company for Entry of Order Imposing Lien in favor of First and Refunding Mortgage Bondholders.

7. Following this Order, Petitioner in May, 1944, presented to the Commission a program for the use of earnings to improve the Debtor's properties and to pay its First Mortgage. The Commission's report of January 8, 1945, included such a program. On April 8, 1947, the Commission reversed that decision by its report of that date and provided for a transfer of all properties of the Debtor and a large sum of the earnings from operations to the Atlantic Coast Line Railroad Company free from the vested liens of the mortgagees. The Trustee was ordered to pay the First Mortgage out of cash and to create reserves for a "Rehabilitation Program" similar to that presented by Petitioner in 1944, approved in the Commission's report of January 8, 1945, but for the benefit of Atlantic Coast Line Railroad Company.

8. The Commission's report dated April 8, 1947, materially changed the position of the First and Refunding Bondholders. Prior to that report, First and Refanding Bondholders had consented to the use of earnings upon which they had a lien, to pay for the construction of additions and betterments, to purchase new equipment, and to make other improvements to the Railway, relying upon the previous rulings of the Commission and of this Court.

9. After that Report was filed, Petitioner objected to the use of cash in the hands of the Trustee to pay for additions and betterments, and purchase new equipment; on July 17th and July 25th, 1947, and on May 17th, 1948, orders were entered authorizing cash expenditures by the Trustees for those purposes but securing repayment of the money expended, to the First and Refunding Bondholders in the event the Report and Order of the Commission dated April 8, 1947, and March 25th, 1948, should be approved by the Court, by liens upon the property of the Debtor and cash in

the hands of the Trustees, superior to any interest Atlantic Coast Line Railroad Company might obtain in this reorganization proceeding.

10. The "Rehabilitation Program" contained in the Report of the Commission dated April 8, 1947, is essentially the Program suggested by Petitioner in May, 1944, as modified by its suggestions at the hearing in 1945. In adopting this program as a part of its Report, the Commission did not give consideration to the expenditures made out of earnings for the purposes stated between July 1, 1944 and January 1, 1947.

11. Petitioner does not know the amounts nor the purposes for which all expenditures for additions, betterments, improvements, etc., were made by the Trustees since July 1, 1944, but says that among them were the following:

(a) They paid $329,600 for stock in the Pullman Company, which is held as an asset of the Trustees. Purchase of that stock was authorized in 1946 but Petitioner did not know of the payment until after it had been made.

(b) They paid $420,481.17 to E. G. Budd Manufacturing Company. This was the initial payment on a retained title contract dated March 15, 1946, between the Trustees and the Manufacturing Company for the purchase and sale of new passenger coaches. Under the terms of that contract, the Trustees are also required to make additional payments at the times fixed by that contract. Petitioner does not know the total amount paid thereon to date but alleges that the total exceeds $500,000 and additional payments will be made hereafter monthly.

(c) This Court, by orders entered between July 1, 1944 and July 1, 1947, authorized the Trustees to expend $1,825,000 for extraordinary additions and betterments. Reports filed by the Trustees show that under some of these orders, expenditures exceeded the amounts authorized; under others, they were less than the amounts authorized. Trustees have not reported the amounts expended under all those orders.

(d) On June 7, 1944, the Trustees were by order authorized to construct the "Fort Pierce Cut-off". They estimated the cost of same at the then cost of labor and materials at $1,030,000, exclusive of salvage. The Commission's Rehabilitation Program estimated the cost of constructing that project at $1,170,000. On July 10, 1947, the Trustees reported to this Court that they had at that time expended more than $1,200,000 and that the total cost would exceed $1,400,000. No order has been entered approving expenditure of more than $1,030,000. The Court should determine the amount expended in excess of the Commission's estimate of cost and to whom the same should be charged since the Commission's Report expressly provides that all cash in excess of the amounts required to be reserved for the items specified in the "Rehabilitation Program" must be distributed to holders of First and Refunding Bonds.

11. Petitioner alleges that none of the expenditures above described were taken into consideration by the Commission in its determination of the value of the property of the Debtor to be transferred, nor did the Report create any reserve to pay for them; that First and Refunding Bondholders are entitled to be reimbursed for all amounts expended by the Trustees since July 1, 1944, for additions

and betterments, or improvements by the Trustees not included in the "Rehabilitation Program" before a transfer of the property of the Debtor or a transfer of cash by the Trustees as required by the Commission's Report and Order of April 8, 1947, can be made, otherwise cash belonging to said Bondholders will have been taken from them without compensation and expended for the benefit of Atlantic Coast Line Railroad Company.

WHEREFORE petitioner prays: That

(1) The Trustees be required to report to this Court

(a) The amount expended by them under orders of this Court authorizing cash expenditures for additions and betterments between July 1, 1944 and July 1, 1947, and that the Trustees designate by reference the order or orders under which all such expenditures were made.

(b) The amount of the purchase price of stock in the Pullman Company and the amount of dividends received thereon.

(c) The total cost of constructing the Fort Pierce Cut-off, including credits for salvage, etc.

(d) The total amount paid to E. G. Budd Manufacturing Company and/or The Florida National Bank of Jacksonville, assignee—with dates of payments—on account of principal and interest under the contract between E. G. Budd Manufacturing Company and the Trustees, dated March 15, 1946.

(e) The amount, or amounts, expended by them for other additions and betterments, equipment, land, etc., including the amount spent for reconversion of existing cars, locomotives, installation of air conditioning, etc., that were not provided for or included

in the Rehabilitation Program of the Report of the Commission dated April 8, 1947, and the date, or dates, on which such expenditures were made.

(f) The portion of each of said expenditures that were charged by them to operating expenses and the portion charged to capital expenditures.

(2) This Court enter an order or orders similar in substance to its orders dated July 17th and July 25th, 1947, and May 17th, 1948, securing reimbursement and payment to First and Refunding Bondholders of the total cash shown to have been expended by the Trustees out of net earnings from the property of the Debtor for the purposes hereinabove described, by imposing a lien in their favor on all property of the Debtor and on all cash in the hands of the Trustees superior to the lien securing the First and Refunding Mortgage and superior to any interest, right or title that Atlantic Coast Line Railroad Company might obtain in reorganization of Debtor under and by virtue of the Reports of the Commission dated April 8, 1947, and March 25th, 1948.

(Signed) GILES J. PATTERSON,
Attorney for St. Joe Paper Company.

Endorsed:

"Filed July 30, 1948, Jacksonville, Fla.

EDWIN R. WILLIAMS, Clerk."

Motion of St. Joe Paper Company for Leave to Amend Petition Relating to Liens.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J

St. Joe Paper Company, holder of First and Refunding Bonds of Florida East Coast Railway Company, moves the Court for leave to amend its Petition which was filed July 28, 1948, and to which Atlantic Coast Line Railroad Company filed an Answer. Said Petition prayed for a lien upon the properties and cash of the debtor in a manner and form and in an amount to be determined in accordance with the allegations of said Petition. A copy of the Amended Petition which we desire to file is attached hereto and made a part of this Motion, and notice of the filing of this Motion, together with a copy of said Petition is being mailed to the parties to this cause.

Or, in the alternative, Petitioner prays for leave to amend this Petition under the authority of the Segregation Order entered by this Court on March 7, 1941, due notice being given to all parties of record of the filing of the same and copy of said Motion being attached to said notice.

(Signed) GILES J. PATTERSON,

(Signed) J. R. TURNEY,
Attorneys for St. Joe Paper Company.

BLEED THROUGH

Amended Petition.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J

Petitioner, St. Joe Paper Company, owner of Twenty-Five Million Dollars of First and Refunding Bonds of Florida East Coast Railway Company, respectfully shows to this Court:

1. This Court by order dated May 12, 1932, in the case of Bankers Trust Company and Jones against the debtor, Equity No. 757, appointed William R. Kenan and Scott M. Loftin as receivers of the debtor's property and of all tolls, earnings, income, rents, issues and profits thereof; instructing them to take possession of all the property and assets of whatsoever kind and character of the debtor covered by the mortgage securing the First and Refunding Bonds, to operate and manage said mortgaged lines of railway, to collect and receive all income and moneys due it or to themselves as receivers, and to pay all the expenses of operation; to segregate and sequester for the benefit of the plaintiff in said cause and the holders of the bonds "all tolls, income, revenues, issues and profits arising from the operation of the property and assets covered by said mortgage, and apply the same to or for the benefit of said mortgagee and

bonds secured thereby, subject only to such legal and proper expenses and uses as the Court may determine necessary to be incurred in the operation and preservation of said property and assets, having due regard for the rights of the complainants and the holders of the bonds and the protection of the security." The receivers operated said properties under that order from the time of their appointment to February 1941.

2. On February 2, 1941 trustees in bankruptcy were appointed for the debtor by this Court, and possession and operation of the properties of the debtor was transferred to them. On March 7, 1941, this Court by an order directed the trustees to preserve such basic information and keep such records of account as would permit a segregation of the debtor's incomes, rents, revenues, issues and profits which had been or might thereafter be derived from the operation of the properties covered by the lien of the mortgages, and that the trustees under any mortgage or any bondholder were entitled to apply at the conclusion of the proceeding or "at such earlier time as they might deem proper," upon notice to all parties of record, for the enforcement of their rights or liens upon the debtor's income, rents, revenues, issues and profits of the property covered by the lien of such mortgage, and all its or their rights in or of the lien upon any of the proceeds thereof, and for an equitable adjustment as between those interested in this proceeding with respect to any use which may have been made of the same.

3. The annual reports of the Receivers and Trustees in bankruptcy for the years 1932 to the year 1951, inclusive, show that the operation of the properties by them under orders of this Court have resulted in a profit available for fixed charges amounting to more than $43,235,565.00. Out of this they have paid interest on the First Mortgage bonds of the debtor amounting to more than $9,500,000. No

BLEED THROUGH

interest was paid to the holders of the First and Refunding Bonds prior to the filing of the petition in bankruptcy in 1941. Since that date the trustees have paid seven coupons amounting to $7,875,000, equal to 3½ years' interest.

4. At the time the receivers were appointed in 1932, the debtor did not have sufficient cash to pay its current liabilities; all cash now in the hands of the trustees in excess of their current liabilities has accrued out of income from court operations or from proceeds derived from the sale of properties subject to the mortgage. The latter is held in a special fund exclusively for the benefit of the mortgagees.

5. On April 6, 1942, the Interstate Commerce Commission proposed a Plan of Reorganization and held that owners of First Mortgage and First and Refunding Bonds of the Debtor were entitled to receive all securities issued thereunder because the value of the debtor's property was less than the amount owing on its mortgage.

6. On October 19, 1943, this Court disapproved that Plan of the Commission and referred it back to the Commission. In an opinion rendered simultaneously, this Court advised the Commission that net cash earnings in the hands of the Trustees should be distributed to the secured creditors or expended for their equitable benefit.

7. In May, 1944, Petitioner presented to the Commission a program for the use of earnings to improve the debtor's properties. The Commission's report of January 8, 1945 included such a program. On April 8, 1947, the Commission set aside its 1945 report by its Third Supplemental Report of that date and provided for a transfer of all properties of the debtor and a large sum of cash earnings from operation of the properties to the Atlantic Coast Line Railroad free from the vested liens of the mortgages.

The Trustee was ordered to pay the First Mortgage out of cash and to create reserves for a "rehabilitation Program" similar to that presented by Petitioner in 1944, approved in the Commission's report of January 8, 1945, but intended to benefit Atlantic Coast Line Railroad Company, without increasing the value of the properties fixed by its Second Supplemental Report.

8. The report of April 8, 1947 materially changed the position of the First and Refunding Bondholders. Prior to that report, First and Refunding Bondholders had consented to the use of cash earned by the Trustees upon which they had a lien, to pay for additions and betterments, to purchase new equipment, and to make other improvements to the Railway, relying upon previous rulings of the Commission and of this Court that the cash earnings were the property of the bondholders and that they were the equitable owners of the property subject to mortgage and entitled under law to become the legal owners of its property.

9. After that report was certified to this Court, Petitioner objected to the use of cash in the hands of the Trustees to pay for additions and betterments, and purchase new equipment. This Court, by orders (beginning July 17, 1947) from time to time authorized the Trustees to expend cash for the construction of extraordinary additions and betterments not provided for by the Second and Third Supplemental Reports, holding that the money so expended was the property of the First and Refunding bondholders and was advanced by them to the Trustees for the purposes stated, and that reimbursement therefor was secured by liens on all the properties and cash of the debtor, superior to all other liens except that of the First Mortgage, and superior to any interest that might be acquired by any party (including Atlantic Coast Line Railroad Company) in this reorganization proceeding.

BLEED THROUGH

10. The Report of the Commission dated April 8, 1947 did not give consideration to these expenditures made and to be made out of earnings for the purposes stated between July 1, 1944 and January 1, 1947, in fixing the value of the property for transfer or sale, nor to their legal rights under their mortgage.

11. At the time receivers were appointed, there were outstanding and unpaid equipment obligations of the debtor amounting to over $5,000,000, which were paid in full by the Receivers or Trustees out of their income. They expended a considerable sum of money for miscellaneous additions and betterments, executed new equipment trusts, and initiated a program to completely rerail the entire double track main line and its branch lines (other than the Okeechobee extension) at a cost of over $10,000,000, all of which was paid for in cash by the Trustees. A major portion of that cost was charged to operating expenses and deducted from gross income. Over $2,000,000 was credited as capital investment. The total cost of rerailing the railroad and purchase of new equipment by the Receivers and Trustees prior to July 17, 1947 amounted to $16,066,890. The Trustees have deducted depreciation on account thereof amounting to $3,482.27 (no depreciation having been taken on new rail) the residual plant value of the same as shown by the Trustees' books being $7,318,850.27. $921,827.41 of the purchase price is unpaid. Expenditures made by the Trustees since July 17, 1947 for similar purposes which are secured by lien orders on December 31, 1951 amount to $6,333,550.42. Depreciation has been taken on these properties in the sum of $997,981.57, leaving a residual value of said properties according to the books of the Trustees, of $8,997,617.23. $3,336,280 of the purchase price is still unpaid. The expenditures of cash diverted from payment of the mortgage, amount to $22,400,440.89 (not including minor items). The residual value of all these improvements as of December 31, 1941 is $16,316,467.50, and the unpaid balance owing equipment trusts is $4,258,107.

Among the improvements made or equipment purchased or other additions and betterments included in this program which are not protected by the liens ordered by this Court are:

(a) Purchase of Pullman Company stock in the sum of $329,000 which is held as an asset of the Trustees;

(b) Three (3) diesel engines costing $528,733.24;

(c) Thirty (30) 50 ton gondolas and thirty (30) 50 ton hopper freight cars, $153,983.10;

(d) Three (3) streamlined coach trains, $1,116,000;

(e) Fifty box cars equipped for passenger train service, $383,551.66;

(f) Fifty (50) box cars for use in freight service, $176,499;

(g) Fifteen (15) diesel engines, $1,960,291.37;

(h) Twenty (20) streamlined passenger train cars, $1,580,663.89.

(i) The total cost of the Fort Pierce Cut-off was $1,543,921.88, less a credit of $461,427.42 representing salvage of material removed from the abandoned Okeechobee Branch.

(j) Miscellaneous other additions and betterments characterized as "General A and B" some of which are permanent improvements and some of which would result in an increased income to the railroad and were not otherwise necessary for the safe operation of the same, have been paid for with cash.

(12) Petitioner alleges that the expenditures above described were, in the main, if not all, extraordinary expenditures to improve the ability of the railroad to earn money and to compete with other lines, and were not such as could

BLEED THROUGH

have been ordered paid for out of income and profits from operation of the road by the Court without the consent of the bondholders. They represent new capital investments made by bondholders in the amounts stated, and paid either from earnings or from cash realized from sales of property subject to the mortgage securing First and Refunding Bonds.

Neither the Third nor the Fifth Supplemental Reports gave proper consideration to these expenditures of bondholders' funds in determining the price that Atlantic Coast Line should pay for the properties of the debtor. The Fifth Supplemental Report purported to increase the payment to be made above the amount fixed by the Third Supplemental Report in an amount that would compensate the bondholders for the surrender of the liens that have already been established by the Court in Second Mortgage income bonds, but made no provision to compensate them for other capital investments made by them, which are hereinabove described and set forth, and made no provision for compensating the bondholders for a surrender of their legal rights to become the legal owner of the debtor's property in lieu of reimbursement, utterly disregarding the express provisions of the mortgage securing the bonds, that a transferee by merger or consolidation must assume payment of the principal and interest of the mortgage securing the First and Refunding Bonds.

Wherefore, Petitioner prays:

1. That this Court, in accordance with its reservations of power in the various lien orders, provide for the reimbursement of the First and Refunding Bondholders for all sums expended for capital improvements or "if equitable considerations so require, determine the amount in which they should be reimbursed and provide for their reimbursement in cash or in securities which shall constitute a fair and adequate *quid pro quo* for the cash diverted from them, and secure their reimbursement therefor by a lien upon the properties of the debtor and of cash in the

hands of the Trustees, which shall be superior to any other lien except that of the First Mortgage Bonds, and which shall be superior to any interest or title that can or may be acquired by any parties who shall receive the benefit of said additions and betterments as it did in its order of July 17, 1947 and other similar orders subsequently entered.

2. Without prejudice to the right of the Petitioner to urge objections heretofore filed by it in its own behalf, or to urge the objections filed by them jointly with the Trustees and other holders of First and Refunding Bonds, the Court provide by proper order for the enforcement of the rights of the First and Refunding Bondholders to, or liens upon, the tolls, incomes, rents, revenues, issues and profits of the property covered by the lien of the mortgage securing said bonds, and of the rights of the First and Refunding Bondholders in, or lien upon, any of the proceeds thereof, and for such equitable adjustment as between the holders of the First and Refunding Bonds and all other parties to this cause, with respect to the use which has been made of the incomes, rents, revenues, issues and profits from the property covered by the lien of their mortgage and pledged to secure the payment of same; to insure the reimbursement of said bondholders for the cash which has been diverted from payment to said bondholders to the uses above set forth, and by order fix the amount which they are entitled to receive and the method of reimbursing them, unless they become, as they assume they had a right to, the legal owners of the stock of a reorganized railroad.

(Signed) GILES J. PATTERSON,

(Signed) JOHN R. TURNEY,

Attorneys for St. Joe Paper Company.

Endorsed:

"Filed Jan. 21, 1952, Jacksonville, Fla.

EDWIN R. WILLIAMS, Clerk."

NOTE—Proof of service upon parties to cause, omitted in printing.

Order Respecting General Additions and Betterments for the Year 1947.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad

IN THE MATTER

of

FLORIDA EAST COAST RAILWAY COMPANY,
Debtor.

No. 4827-J

This cause coming on to be heard after due notice, upon application of the Trustees for authority to increase, for the year 1947, the amount of the general authorization made herein (Doc. 3) for general additions and betterments to the property of the debtor railway, particularly for the additions, betterments and improvements described in the Petition of the Trustees, and the Court having considered said Petition and the evidence submitted and it appearing from said evidence that none of the additions and betterments described in the Petition of the Trustees except the proposed expenditure of $90,000 for shop machinery are included within the program of rehabilitation provided for in the report and order of the Interstate Commerce Commission dated April 8, 1947, and

The Court being of the opinion that the additions and betterments described in the Petition of the Trustees are necessary and should be made, but that the rights of the holders of First and Refunding Mortgage Bonds of Florida East Coast Railway Company in the cash assets should be respected and preserved since all of the cash is subject to

the lien of the mortgage securing the First and Refunding Bonds of Florida East Coast Railway Company.

IT IS HEREBY ORDERED AND ADJUDGED:

That the Trustees be and they are hereby authorized to expend during the calendar year 1947, a sum not to exceed $600,000 for general additions and betterments to the properties in their custody (not taking into account special authorizations for unusual and extraordinary improvements) in addition to the use of materials and supplies already on hand, accounting adjustment for use of tools, transportation charges for the same, etc., not requiring cash expenditures.

This order shall apply only to the year 1947 and the authorization of not to exceed $85,000 made by the order of January 31, 1941 (Doc. 3) shall remain in full force and effect as to all subsequent six months periods unless otherwise ordered.

That the money so authorized to be expended by the Trustees (except the sum of $90,000 for shop machinery) shall, when expended, be deemed to have been advanced by and for the account of the holders of the First and Refunding Bonds of Florida East Coast Railway Company who shall be reimbursed therefor, and to secure such reimbursement said holders of First and Refunding Bonds shall have and they are hereby given a lien upon the cash and property of the debtor corporation to the extent of the sum of $510,000 so advanced to and expended by the Trustees for additions and betterments to the property of the debtor, which lien to the extent of the sums advanced and expended for the purposes named in said Petition, shall be subject only to the lien of the mortgage securing the debtor's First Mortgage Bonds and shall be superior to any interest in the property acquired through reorganization.

The Trustees are required to make report as to the additions and betterments herein authorized when they have been completed.

BLEED THROUGH

Order Authorizing Trustees to Construct Buildings and Facilities at Miami and Lease Same to Acme Fast Freight, Inc.

The making of this order is not to preclude the Trustees from making special application for additional sums in particular cases for extraordinary additions and betterments.

DONE AND ORDERED at Jacksonville, Florida, this 17th day of July, 1947.

(Signed) LOUIE W. STRUM,
United States District Judge.

Endorsed:

"Filed July 17, 1947, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk."

Order Authorizing Trustees to Construct Buildings and Facilities at Miami and Lease Same to Acme Fast Freight, Inc.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad

IN THE MATTER
of
FLORIDA EAST COAST RAILWAY COMPANY,
Debtor.

No. 4827-J

This cause coming on to be heard, after due notice, upon application of the Trustees (a) for authority to lease to

Order Authorizing Trustees to Construct Buildings and Facilities at Miami and Lease Same to Acme Fast Freight, Inc.

Acme Fast Freight, Inc., a corporation, a parcel of land adjacent to the Debtor's Miami Belt Line at 24th Avenue in Dade County, Florida, together with two buildings, tracks and other facilities to be constructed thereon by the Trustees, for the term of five years from date of completion of such buildings, with privilege to lessee of renewal for an additional five-year term; and (b) for authority to expend approximately $171,000.00 for the construction of said two buildings, tracks and other facilities so to be constructed and included in said lease; and the Court having considered said application and heard argument of counsel; and it appearing to the Court that the construction of said two buildings, tracks and other facilities and the execution and delivery of said lease, as described in said application, will be in the interest of the bankruptcy estate and the creditors thereof and also in the public interest; and it appearing that the aforesaid two buildings, tracks and other facilities to be constructed are not included in the rehabilitation and improvement program provided for in the Report and Order of the Interstate Commerce Commission dated April 8, 1947 (Doc. 578), that said buildings, tracks and other facilities are necessary additions and betterments to the property of the debtor which should be made, and that the rights of the holders of the First and Refunding Mortgage bonds of Florida East Coast Railway Company in the cash assets should be respected and preserved, since all of the cash is subject to the lien of the mortgage securing the First and Refunding Mortgage bonds of Florida East Coast Railway Company;

IT IS HEREBY ORDERED AND ADJUDGED:

1. The Trustees are authorized, empowered and directed to execute, deliver and put into effect a lease with Acme Fast Freight, Inc., a Delaware corporation, covering the

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lands and the two buildings, tracks and other facilities to be constructed thereon, as described in the Trustees' application, for a five (5) years' initial term, commencing upon completion of construction of such improvements, with optional renewal five (5) year term, at a rental for each five-year term of thirty-five per cent (35%) of the actual cost of the Trustees of the land and improvements to be constructed thereon, with such additional provisions not relating to total term as may be approved by the Trustees, and thereby bind themselves as such Trustees, but not individually, and their successors and the assigns of the debtor's estate.

2. Disposition of the rentals received by the Trustees from the lease to Acme Fast Freight, Inc., herein authorized to be executed and delivered, and all questions in regard to the extent and priority of the liens of the First and of the First and Refunding Mortgages of Florida East Coast Railway Company upon such rentals, are reserved for future determination.

3. The Trustees, upon execution and delivery of such lease to said Acme Fast Freight, Inc., are authorized to expend out of funds in their hands as Trustees, approximately $171,000.00 for the construction of the two buildings, tracks and other facilities described in the Trustees' application.

4. The money hereby authorized to be expended by the Trustees for the aforesaid additions and betterments, shall, when expended, be deemed to have been advanced by and for the account of the holders of the First and Refunding Mortgage bonds of Florida East Coast Railway Company who shall be reimbursed therefor, and to secure such reimbursement said holders of said First and Refunding Mort-

gage bonds shall have and they are hereby given a lien upon the cash and property of the debtor corporation to the extent of the sum of approximately $171,000.00 actually so advanced and expended by the Trustees for the aforesaid additions and betterments to the property of the debtor, which lien, to the extent of the sums so actually advanced and expended for the purposes named in the Trustees' application, shall be subject only to the lien of the mortgage securing debtor's First Mortgage bonds, and shall be superior to any interest in the property acquired through reorganization.

5. The Court reserves jurisdiction to redetermine the amount of said lien, if equitable consideratons so require, at the time of the final consummation of this reorganization. The Orders of July 17, 1947 (Doc. 588), July 25, 1947 (Doc. 595) and May 18, 1948 (Doc. 662) are also amended by adding thereto, the same paragraph.

DONE AND ORDERED at Jacksonville, Florida, this 6th day of October, 1948.

(Signed) LOUIE W. STRUM
Chief Judge.

Endorsed:

"Filed Oct. 6, 1948, Jacksonville, Fla.

Edwin R. Williams, Clerk."

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Order Denying Petition of Atlantic Coast Line for Modification of Previous Orders.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

JACKSONVILLE DIVISION.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER

of

FLORIDA EAST COAST RAILWAY COMPANY,
Debtor.

No. 4827-J

All affected parties having been heard, after due notice, upon the matters hereinafter mentioned, upon consideration thereof, it is—

ORDERED AND ADJUDGED:

1. The petition of Atlantic Coast Line Railroad Company (filed May 2, 1950) for a modification of the orders contained in documents Nos. 588, 595, 662, 703, 705, 765 and 791, generally referred to as the "Lien Orders," is denied.

DONE AND ORDERED at Jacksonville, Florida, June 29, 1950.

(Signed) LOUIE W. STRUM,
Chief Judge.

Memorandum.

The Court is still of the opinion that the First & Refunding bondholders are equitably entitled to the continued security of the liens created by said orders. These funds

were pledged to said bondholders to secure the payment of bond interest long in arrears and still unpaid. Notwithstanding that pledge, the funds were diverted, not to ordinary maintenance or operation, but to pay for additional equipment, additions and betterments which enhanced the value of the railway property and which were regarded as necessary to enable the Railroad to successfully compete with other transportation companies. To the extent that the value of the property is thus enhanced these bondholders are entitled to reimbursement just as if this money had been borrowed from a third party for the purpose stated, the Court reserving jurisdiction to redetermine the amount of said liens, if equitable considerations so require, at the time this reorganization becomes effective. To secure this reimbursement, the bondholders are entitled to a lien superior to any interest acquired by new parties who receive the benefits of these extraordinary additions and betterments through reorganization.

Unless these liens are superior to any interest acquired through reorganization, they would not be tantamount to the security held by the bondholders upon the funds diverted for additions and betterments. Indeed, they would be of little value to the present bondholders without this priority. The deeds of trust securing the two bond issues are superior to any interest to be acquired through reorganization, and must be dealt with accordingly, just as these liens, in formulating a plan of reorganization. To do so, should offer no serious obstacle.

Under 11 U. S. C. A. 205 (b) (1), the Interstate Commerce Commission has broad powers as to the issuance of new securities to replace existing securities. If the Commission desires to submit a plan which offers these creditors, instead of these specific liens, a just and equitable equivalent thereof,—a fair and adequate *quid pro quo*,—the Court will of course consider it. Certainly such a course would be no affront to the Court, as some of the parties seem to

apprehend. The Court's sole concern would be whether or not the subsequent reimbursement or securities offered by the plan are in all respects, in the hands of said creditors, a just and equitable equivalent of the securities afforded by the existing liens, so that the creditors would be in equally as good position with the new securities as they are with the present liens. This question would be tested, not alone by a consideration of whether or not the obligation of the debtor is as great under the new securities, but also whether or not the position of the creditors would be as favorable with the new securities as it is with the existing liens.

(Signed) LOUIE W. STRUM,
Chief Judge.

Endorsed:

"Filed June 29, 1950, Jacksonville, Fla.,

EDWIN R. WILLIAMS, Clerk."

Order.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J

Upon the motion of Appellees to extend time within which to file and docket appeals and to file the transcript of record on appeal, all affected parties having been heard, after due notice, it is upon consideration thereof:

ORDERED AND ADJUDGED:

1. That time within which counsel for Appellees hereto may file their designations of additional portions of the record, proceedings and evidence to be contained in the record on appeal in the above entitled cause is extended to and including the 19th day of June, 1952.

2. That the time for filing and docketing said appeals and for filing the transcript of record on appeal in the Court of Appeals in the above entitled cause, be and the same is hereby extended to and including the 3rd day of July, 1952.

DATED June 6, 1952.

BRYAN SIMPSON
United States District Judge.

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Portion of Transcript of District Court Hearing, July 10-11, 1947.

[194] The Court: I think the Court certainly has the power to impose a lien to secure this advance. There isn't any doubt in my mind about that. I will be just as frank and say right here that in these circumstances which we are confronted, if this money is used for that purpose and the Trustees say that it must be, and I am largely persuaded that they are right, then I think the Five Percent Bondholders whose money it is, are entitled to be protected in that event, and I am going to see that they are protected as far as the Court has power to do it. So, you all know what I think about that. But, I do have some very serious doubts about whether I can order certain things to be done as a component part of the plan.

[195] Mr. Patterson: I can suggest to the Court the reason we left that in. We didn't know what the outcome may be on the rehearing or in the future, and we didn't know how to provide for the liquidation of it. If it creates a prior lien, I know your Honor well enough to know if you say you are going to protect the lien, you are going to do it and they are going to get protection. I am not worried about that, but it did seem to me in drafting the order, there should be some indication as to how it should be liquidated, and the reason we left it vague, is because, as I pointed out a while ago, and this was discussed with counsel for the Coast Line yesterday afternoon, we discussed it and showed them a draft of the Order. It was suggested then that it might be that the Commission could retry it on account of these changes that have taken place in the expenditures under the rehabilitation program, but that would be a matter that the Commission could determine as to what should be done if anything under that, or what the——.

The Court: My notion is to give you a prior lien on these advancements. The Commission is under responsibility to determine whether it is in conformity with the plan, and this Court determines if it is fair and equitable in the long run.

[196] Mr. Patterson: We will leave it to your Honor with reference to any changes.

COPY BOUND CLOSE TO EDGE

Taken from Transcript of Hearing, July 10-11, 1947.

The Court: I would be glad to have further suggestions from counsel along this line as to just what should be provided by the lien.

Mr. Patterson: I don't see how I can make it more definite. There would not be any use to give us a lien and order the Trustees to pay it out of cash on hand, because you might as well not create the lien in the first instance, it seems to me.

The Court: I want to provide in the order, at least, that the lien is subordinate to the First Mortgage Lien.

Mr. Patterson: Yes.

The Court: So we will have that out of the picture.

Mr. Patterson: Yes. I started one time to put in there that in the event the present plan of the Commission were confirmed and title was transferred to the Atlantic Coast Line Railroad Company, such and such a thing would happen, but that gets you into difficulty.

The Court: That is what I am thinking about now. That lien is subordinate only to the First Mortgage lien, and that it should be discharged in cash or [197] amply secured, I suppose I could put in there, prior to any other interest in the property under reorganization.

Mr. Patterson: That will be satisfactory. Your Honor's language I think would be satisfactory.

The Court: Or words to that effect.

Mr. Patterson: I will try to redraft it. I don't know if I can remember your language, as I did not write it down.

The Court: The gentleman, here, is writing it down.

Mr. Patterson: Yes, he has it down.

The Court: I am not wedded to that suggestion, but that is the substance that we have in mind.

Mr. Patterson: We will get it from the Reporter.

The Court: I am reluctant to tell the Interstate Commerce Commission what should be in that plan, but I do think the Interstate Commerce Commission should and no doubt will respect whatever liens this Court puts upon the property.

BLEED THROUGH

Portion of Transcript of District Court Hearing, July 25, 1947.

[2] C. C. Howell, Esquire, of the law firm of Howell, McCarthy, Lane & Howell, counsel for the Atlantic Coast Line Railroad.

Reporter:

V. F. Halter.

The Court: All right, gentlemen, we will take up this Florida East Coast matter now, concerning the purchase of the new equipment. Does anybody here want to oppose anything that the Trustees propose to do?

Mr. Howell: Well, if your Honor will grant me the indulgence again, today, that you did the other day, I would like to submit to you, on behalf of the Atlantic Coast Line, an objection to Paragraph 8; the proposed Paragraph 8.

Mr. Frink: It is on the second to the last page. It commences at the words "and it appearing". These are the pick-up words.

The Court: That is the same thing we had the other day?

Mr. Frink: That is right. That was put in at Mr. Patterson's request.

The Court: Do you think we should spend this [3] money, which is not comprehended in this plan, which is otherwise payable to the bondholders, to buy new trains and turn them over to the Coast Line without anything being restored to these bondholders?

Mr. Howell: No, sir, your Honor, we do not think that; we think they are entitled to protection. As I tried to say to you the other day, that it was the procedure presented by these gentlemen, and what is to be done with respect to these additions and betterments, should be determined by the Commission. If we do not leave it to the Commission, we are going to be like the rabbit, chasing the dog, and who has the distance in each jump he makes; we will never get to the end, except *ad infinitum*.

Taken from Transcript of Hearing held on July 25, 1947.

The Court: How will we get at that in a practical way? How will the Commission determine it? They have had this plan up there three years. In the meanwhile, we have to have the railroad.

Mr. Howell: The assaults that have been made on the briefs, give the Commission every opportunity to consider, to the extent they deem proper, to agree with any of the objections they may make, and the suggestion is made in at least one of the briefs I have seen, that this, not only the $510,000 your Honor had under consideration two weeks ago, and this [4] present contemplated expenditure, but likewise all of the expenditures that have been found necessary or presumably will be found necessary since the date the matter was determined by the Commission, and which amounts to some $2,850,000, should be (a) either paid to the First and Refunding Mortgage Bondholders in cash, to be advanced by the Coast Line, or that the Coast Line should furnish additional securities of at least that amount.

Now, that, of course, it seems to us, is squarely an amendment of the plan. The plan was still before the Commission. Technically, it is not before your Honor at all.

The Court: What practical means are we going to follow if we follow your suggestion of buying this train and paying for it and protecting the Five Percent Bondholders?

Mr. Howell: Your Honor will protect these bondholders with respect to these expenditures, just like you have protected them in all expenditures that have been made since December 31, 1945, I believe. And, your Honor's ability to do that will be under the reservation of jurisdiction that you have consistently utilized in all of these orders before.

The Court: That would be a so-called amendment [5] of the plan at that time. Why not provide for it now? Suppose I did reserve jurisdiction, what do I do then?

Mr. Howell: I should think your Honor would wait until the Commission has finally acted and submitted the plan to you.

BLEED THROUGH

The Court: Yes, then what would I do?

Mr. Howell: It would depend on what the plan said. Apparently the plan would make some provision for the additional expenses. It ought to. But, I cannot say that the capitalization, now fixed at forty and a half million, would be increased by $2,850,000, because these expenditures have been made, because the amount of expenditures is not the test of the capitalization. The prime test of capitalization, as we understand it, is the reasonably to be anticipated earning power of the railroad, and it does not follow by any means that because $2,850,000 more money has been put into the railroad, that the capitalization must be fixed at a figure.

The Court: No, but these Five Percent Bondholders are standing here saying, "We have a lien on this money". They say, "The Atlantic Coast Line has no interest in it, and nobody else. It is our money. We have a lien on it, and the Florida East [6] Coast Railway owes us more money than that, now, and we do not want that money spent for the benefit of some new interests coming in here, the Atlantic Coast Line, or anybody else, and we want it paid to us." What about that?

Mr. Howell: I am still not prepared to argue it on the merits of the proposition, to your Honor. The only man connected with our side of the case that is qualified to argue the merits, is Mr. Edward W. Bourne, and I would like to transmit to your Honor, a few points that he gave me on July 23rd, after having talked with me over the telephone. His view is that it is important that the orders entered by your Honor should not create unnecessary difficulties or complications. And he says, if the St. Joe Paper Company expects to have the petitions for modifications denied and if, as publicly announced——.

Mr. Patterson: Wait a minute. Read that again.

Mr. Howell: That if the St. Joe Paper Company expects to have the petitions for modifications denied, and if, as publicly announced, it is going to litigate as long and as

hard as it can, perhaps it is logical for it to attempt to have provisions entered in court orders that it might be difficult to reconcile with the Commission's plan. However, if the [7] provisions in the court orders have the effect of obstructing any plan, that can be properly pointed out to the Court.

Then he asked me to submit to your Honor, that your Honor should not enter the order that would obstruct or impede the performance, by the Commission, of its functions, and Mr. Bourne, and I, and the Atlantic Coast Line, agree that it is not open to question, that the holders of the First and Refunding Mortgage Bonds have equitable rights with respect to accumulated earnings in the estate. And we know that if any plan approved by the Commission, fails to take those equitable rights into account, the Court will undoubtedly disapprove it and the St. Joe Paper Company will have an opportunity at the time of the hearing on the plan, to insist that its rights should be protected by the plan. The whole subject can best be considered at that time.

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[11] Mr. Howell: May I say one word more, Your Honor?

The Court: Yes.

Mr. Howell: Still disclaiming any intention or ability to argue the merits in detail, I suggest to your Honor the situation has not changed to the extent counsel suggests. If the Commission finds at all, as it has found, and adheres to its ruling, that the public interest requires that there be a merger of the East Coast with the Coast Line, these gentlemen are entitled to the same amount, proportionately, that they would have, if no merger had been ordered. If there were no merger, what they would be entitled to would be stock and securities at the capitalization fixed by the Commission, $40,500,000. Saying that there shall be a merger, does not have an effect on the capitalization. They

BLEED THROUGH

have talked, and apparently thought all the time, as though they owned the railroad. They do not own the railroad.

[12] They owned the right to be made whole, as far as possible, out of the available assets. As some of the technical witnesses I heard testify before the Commission expressed it, the bonds or securities they get, must be comparable to that value I have mentioned. It makes no difference whether it is forty million five hundred thousand dollars in stocks and securities of the Florida East Coast, or the Atlantic Coast Line. Bonds of the same monetary amount, will of course, be equal to bonds of another of the same monetary amount.

* * * * * *

[13] The Court: Where is the Paragraph 8 which you propose? Have you a copy?

Mr. Frink: Here is the one we served everybody with. Mr. Patterson suggested the other one.

The Court (examining proposed order): Well, the one that Mr. Patterson suggests is, that the Five Percent Bondholders have a lien now, and the one the Trustees propose, simply reserves jurisdiction to determine what the lien is and all about it, hereafter.

Do you wish to say anything, Mr. Frink?

Mr. Frink: No, sir, we have nothing to say.

The Court: Well, that is the only thing to be considered about the order, is it? The only thing you are in disagreement about?

Mr. Howell: Yes, sir.

The Court: Well, all right. I will think about it a little while and let you hear from me. Of course there is a difference, here, now, in one sense. I do not know whether it is a different result in the order now. But, the matter we were [14] talking about the other day, the amount that was being spent for betterments and improvements to better the road, at least their identity, when they go into the road, when expended, or installed. What we are speaking about now is a train that retains its identity and can be later dealt with. It stands on a different physical footing than

those funds the other day. Whether that should make any difference as to the legal problems involved, I will have to think about it.

Mr. Patterson: I would like to say one thing: if this train were being paid for 100% in cash, there might be some practical way of handling it, or a different way, but where it represents the down payment and title to the train will be retained by the seller, or by the assignee, and there will only be an equity there, title to the train will not ripen in the East Coast Railroad for at least ten years, and it would not seem possible to deal with the train in any other manner. As far as Mr. Howell's statement is concerned, I think it is a plain admission of what the purpose of the Coast Line is, and, in making the expenditures, the Coast Line won't get any more, and the capitalization won't be increased, and he gets it for nothing. That is the logical [15] conclusion from his argument. He does not admit that, but when he says $40,500,000.——

The Court: Is it your idea that the Commission will be asked to, and will amend this plan to provide ample protection to the Five Percent Bondholders, with respect to this expenditure?

Mr. Howell: Yes, sir.

The Court: What do you think will be the method? Increasing the capitalization accordingly, or what?

Mr. Howell: I do not know enough about the technicalities of railroad reorganization to answer the question. But, certainly, in reply, the Coast Line, in agreement to the extent stated, as I read from Mr. Bourne's letter, that those First and Refunding Bondholders are entitled to some protection, I should not think that the Commission, in the face of the agreement of everybody else, would order a contrary construction. Whether they will increase the capitalization or what they will do, I do not know, but, I can say with some diffidence, but nevertheless with the study I have made before, I cannot say they would increase it $2,850,000 just because that much additional expenditures have been made.

Mr. Patterson: That is just what I said.

BLEED THROUGH

[16] Mr. Howell: The court has said, as recently as the case of the R. F. C. versus the Denver & Rio Grande Railroad, 328 United States, 495, referring to the older, and more recently, to familiar cases, that the valuation capitalization of the railroad might not affect, necessarily the money spent for improvements during the Trusteeship.

Getting back, if I may, your Honor, to Paragraph 8 as proposed by the Trustees, and Paragraph 8 as proposed by these other gentlemen, as your Honor just well pointed out under that Paragraph 8, you still have jurisdiction to do what you consider fair and equitable when the plan comes back before your consideration. Under this proposed Paragraph 8, in advance of a hearing on the plan, these bondholders are given a lien upon the cash and properties to the extent of the sums advanced, and that lien is made subject only to the lien of the mortgage securing the first mortgage.

The Court: When this plan comes back from the Interstate Commerce Commission, I will not have the authority to attach conditions on to it. I will either have to approve it or not approve it, but, if they do not take this into consideration, the rights of the owners of the equipment into consideration, [17] the way it should be taken, I will have to disapprove the whole plan. If I fix a lien on it, the Commission can still work it into the plan.

Mr. Howell: The point is this, if your Honor please. As Mr. Patterson indicated by one of his last remarks, that their position is that they claim, not only whatever adjustments in the valuations and capitalization the Commission arrives at, but they are going to be entitled to return, in kind, of $2,850,000. Their argument is a fact which we can't meet, but your Honor's anticipatory order is another thing which will not be so easy to meet. If you go ahead and say, here and now, that you give them a lien on all cash and all property, what sort of lien? To the extent of sums advanced, namely, $2,850,910. The Commission may say, and certainly these gentlemen will argue, when your Honor

orders that, that you meant, in addition to everything else, that they should get this $2,850,000.

Mr. Patterson: You admit the cash is subject to our lien. I never heard that in the courtroom in my life. We are the mortgagees.

Mr. Howell: Your client made it.

The Court: It will not make it two million eight hundred thousand dollars. You are just making [18] a down payment now.

Mr. Howell: I am using that figure, if your Honor please; that figure refers to all expenditures made since December 31, 1945 of this nature. I will not vouch for the accuracy of that total, but according to Senator Loftin's letter, we get this total; improvements authorized by your Honor's last order in this connection, $510,000. Now, $960,742.00, which makes $1,470,742.00. Then, there are the anticipatory requirements in relation to the signal system of $450,000, on account of freight cars, $31,250.00.

The Court: I see what you mean; how you get your figures. You just take the down payment on this and then add these other things.

Mr. Howell: Yes, sir.

The Court: But, these Five Percent Bondholders have a lien on these funds now and the railroad owes them more than the money on hand.

Mr. Howell: Your Honor, why have they any more lien on it now, or lien of any higher degree than should be given a more far reaching effect than they have had on any of these expenditures that have been made? All of those things have to be taken into consideration, and were, by the Commission, in formulating the plan, and our present request is——.

[19] The Court: This is a situation under the whole plan, whereby these people will get the money. Now, you are injecting a statement with new provisions in it. That makes a difference.

BLEED THROUGH

Taken from Transcript of Hearing held on July 25, 1947.

Mr. Howell: On that point, if the capitalization is ordered and approved by your Honor, I submit again that they cannot successfully be heard to say "No, we don't want this forty and a half million dollars, or forty two or three million; we want this forty-two or forty-three million over here".

The Court: I do not know about that. I can see that you have a distinct and decided change in the situation over what it has been in the past. Heretofore these Five Percent Bondholders have been regarded as the holders of the equity, or at least by the Interstate Commerce Commission and have been improving their own property for their own benefit, they being the ultimate owners and the ultimate beneficiaries of the road. Now, here comes a total stranger, without the slightest interest in the railroad whatever, and injects himself into the situation and wants to say that the improvements should be completed. That is a very different proposition.

Mr. Howell: If your Honor considers the improvements necessary, as Mr. Bourne states, in [20] referring to the case in 115 Fed. (2d), you would order the improvements made, even though everybody connected with it disagreed with it.

The Court: Oh, yes; the improvements have to be made, that is quite true, to keep the railroad functioning efficiently. Now, instead of the Five Percent Bondholders allowing the money, on which they have a lien, to be spent, for improvements, which they will get ultimately, the ultimate benefit, the Atlantic Coast Line will get the ultimate benefits and they object to taking the money and paying it out on new equipment for the Atlantic Coast Line. I can see that.

Mr. Patterson: That Denver & Rio Grande case was all done with the creditors of the Denver & Rio Grande. The Court said they could spend the money because it benefited the property they were to get.

The Court: On the other hand, it remains to be determined. Taking the view I expressed, it still remains to be

determined when the Court should afford the Five Percent Bondholders their specific protection for these funds that are taken for these improvements and betterments. Whether to do it specifically and categorically now or simply retain jurisdiction and say, "We will do that later on."

[21] Mr. Howell: Unless all of us have lost confidence in the Commission, which all of us have not, we presume the Commission will do what it should do and make arrangements before it sends the plan to your Honor, to provide for these additional expenditures, and what treatment should be accorded the bondholders in respect of them.

The Court: Yes, I think so, too. Suppose the Interstate Commerce Commission did not do that? How could I enforce my view that these Five Percent Bondholders ought to have some protection for these funds. Suppose the Interstate Commerce Commission did not put in anything or put in enough, in the way that I thought, to protect them. Then, what I do—what am I going to do with it at that late date?

Mr. Howell: You disapprove the plan for that reason and send it back to the Commission.

Mr. Patterson: Start all over again.

The Court: I was trying to get the plan approved here, and I still am; I have been for sixteen years.

Mr. Howell: Well, the observation made by your Honor, just before Mr. Patterson spoke last, did not take into account the element, I respectfully submit, of the public interest. Now, the Commission [22] thinks that in the public interest, there should be a merger of the roads. If your Honor finds that that finding has been right, or substantially right, and that it complies with the law of the land, I imagine your Honor will confirm it or concur in it. At any rate, for present purposes, that is what the public interest requires. And, that being true, and for that reason alone, or substantially alone, I will say these gentlemen no longer can say that the money is being spent on our road.

BLEED THROUGH

Taken from Transcript of Hearing, October 1, 1948.

The Commission said, "All right, back here, before, we said you were entitled to the security of forty and a half million dollars, and we think you are entitled to securities of that same amount, maybe forty one or forty two million, or whatever amount they may determine, and that is all you are entitled to." They say, "That represents the equity of your holding now—the value of your holdings now, just as it equitably represented them before". One pot with that much money in it is just as good as another pot with that much money in it, and the same, as to an equal amount of securities.

The Court: Well, these people here say they are entitled to the full amount. That they should be reimbursed to the full extent of the full amount [23] put in. You say you are going to contend for the Atlantic Coast Line that it is not that at all, that it is some sort of a capitalized amount which will be less than that.

Portion of Transcript of District Court Hearing, October 1, 1948.

[69] The Court: The arguments made today by counsel for all parties, have been very enlightening and helpful. I might also add that they have been tremendously brief.

Counsel for the Atlantic Coast Line has said that he is at a loss to understand the motives and purposes of the Five Percent Bondholders in seeking the lien that appears in these previous orders. The Court will not undertake to elucidate that problem as to the motives or purposes of the bondholders. But, the Court will once more elucidate its sole and only pur- [70] pose of the finding in the prior orders, and, here it is.

It has long been established that mortgages upon railroad properties are subject to certain implied conditions. Every railroad mortgagee, in accepting his security, impliedly agrees that all current debts accruing in the ordinary course of operation of the railroad sevice, shall be

paid from the current income before his mortgage claim is paid.

The net earnings, while the railroad is in the possession of the Court, or is being operated by it in reorganization, is not exclusively the property of the mortgagees or the bondholders, but, are subject to the payment of claims which have superior equity as such, and shall be found to exist. In other words, the Court, in operating the railroad, must do what the company would have been bound to do if it had remained in possession, and pay out of what it received from earnings, all debts, which, in equity and good conscience, considering the character of the business, are chargeable against such earnings. And, such debts must be paid out of the income of the company before the claims of the mortgage bondholders are paid.

We all understand the purpose of that holding. This is the general rule, and that has been held in a [71] great many cases, particularly the recent cases decided in the last five or ten years since 77(b) came into operation. It was held in the Denver & Rio Grande case and the Chicago & Rock Island, and also the St. Louis Southwestern, and all of the others, and those cases also held that the purchases of equipment necessary to the operation of the railroad have the same status of current expenses, notwithstanding the fact that the Interstate Commerce Commission charges the new purchases to capital, and, available cash from earnings is to be utilized for that purpose before mortgage interest is paid, and also in preference to the issuance of certificates of indebtedness.

All of those things were said, however, and that is perfectly good law in cases of the type in which that language is used. We are all familiar with the principle that what a Court says must be taken in connection with the facts underlying it and in connection with which the statement is made. The statement must be taken as applied to the facts in connection with which it was made. And, all of those statements were made in reorganization or receiver-

BLEED THROUGH

ship proceedings in which an internal reorganization was in progress for the benefit of the then existing bondholders and security holders.

[72] The road was to be reorganized and wrung out, so to speak, and the security diminished in proportion to the then worth of the road and the ability to earn, and the same security holders as before would go right ahead with it, and it was simply a question in those cases of whether or not the bondholders' interest should be paid first, or whether they should go on and buy this equipment first, and the Courts held, and I think, very properly, that they should buy this equipment first and that the bondholders impliedly agreed that that should be done, and they occupied the same status, generally, of current operating expenses.

However, we have a very different situation here, and that is the reason why the Court has put on this lien, and the Court has done it at the very outset so that all who rhyme or reason, and so that nobody may be kept in the dark for one or two or four or five years, however long this reorganization takes, would be confronted at that late date with something of this kind, at which time the statement might be made, "Well, if I had known that way back yonder in the beginning I would have taken a materially different attitude toward all this". So, the Court is acting at this time in a spirit of candor and frankness, and for the purpose of advising all of the parties now, at the threshold, and [73] not three or four years hence, of what the Court thinks about these matters, because the Court entertains these opinions, now, after hearing these arguments, and I think it is my duty to tell you now. That is the reason I am making the orders now and not deferring them until sometime, maybe remotely in the future. Nobody knows when.

Before I get to that, I said that this situation is different, and here is the difference between this case and the other cases in which the language was used that I have just

repeated. In this case we have a stranger coming in at a rather late date, to whom, in the public interest, the property has been awarded by the Interstate Commerce Commission for a stated purchase price plus any additions that the Court may equitably make.

Now, the basis of that purchase price is a valuation placed upon this property as of, I believe, 1942. Certainly, sometime ago.

Why are you shaking your head, Mr. Bourne? What do you say?

Mr. Bourne: December 31, 1945.

The Court: We will accept your date. December 31, 1945. I think the underlying basis of that valuation goes back beyond that.

Mr. Bourne: There was a reconsideration and a [74] re-discussion on all of that.

The Court: Take December 31, 1945, and I say, parenthetically, in passing, I have something about 1945 in my mind about this valuation, but, I have not had time to check it or trace it down. Anyway, we will take your date.

The basis for this consideration on which the Atlantic Coast Line will pay, is a valuation as of December 31, 1945, certainly no more recent than that. And the plan says that the Coast Line shall pay these amounts plus whatever the Court says on an equitable basis, and for that it shall receive the railroad. The railroad property.

Now, since that time these added items of equipment and all of these other things have been bought, or will be. These Diesels and all of the property involved in the orders of July, 1947, and May, 1948. That property will be turned over to the Atlantic Coast Line if this plan is consummated, when they get the road. And, that property was not taken into consideration at all, and could not be, in fixing the valuation of December 31, 1945, which is the basis of the consideration prescribed by the Interstate Commerce Commission.

BLEED THROUGH

This property has been, and will be added [75] property over and above what was included in that valuation. And, it is being paid for, in part, by funds on which the Five Percent Bondholders have a lien, and which, but for the purchase of these additional properties and these additional expenditures, would, pro tanto, improve the position of the Five Percent Bondholders.

Now, the Court is of the opinion that to the extent that these additions and betterments enhance and increase the properties that the Coast Line will receive if this Plan is consummated, the Atlantic Coast Line should pay for what it gets in addition to what the Interstate Commerce Commission included in that previous valuation. No more than that, and no less. The Atlantic Coast Line should not be required to pay any more than the value of the additional property that it gets, and it ought not to pay any less. And, on the other hand, the Bondholders, the Five Percent Bondholders ought to have restored to them, that of which they have been deprived by the acquisition of this additional property, of which they, the Atlantic Coast Line, under the present proposed plan, will be the beneficiary.

Now, the Bondholders are not entitled to make any profit on that, either. Nor, are they to be deprived of otherwise what would have been theirs [76] without a quid pro quo.

Now, this general rule that I was mentioning a while back, in which it was held in the ordinary course that these purchases of Diesel equipment and the like are in the same status as ordinary operating expenses, is limited to expenditures for improvements reasonably necessary to maintain a road as a going concern, and one able to perform its public function. That is, to maintain the road in a safe and efficient operating condition, and to do all that is necessary to maintain it in that condition, that rule applies. But, it does not apply to enlargements, expansions or betterments which are over and above the requirements of safe and prudent and efficient operation. And, some of these things that have been done and are proposed to be done, fall in

that latter category. I think they are enlargements and extensions rather than essentials to maintain the road in a safe and efficient operating condition.

There is a border line in between those two classes of things which is extremely obscure and the subject of much debate. But, some of these things that are now in mind fall squarely, I think, in the category of enlargements. And, so as to those latter things, that general rule does not apply.

[77] So, it boils down to this: this is all on the assumed premise that the present proposed plan is consummated. I do not want to keep repeating that or harping on it, but I want you to understand that all I say is on the assumed premise of the consummation of this Plan. If this Plan is consummated, the Atlantic Coast Line will receive, in addition to the property included by the Interstate Commerce Commission in its valuation, other property which is now being purchased and which has been purchased since the valuation has been made, and the value of that property is not included in the consideration fixed by the Interstate Commerce Commission to be paid by the Atlantic Coast Line for the property, but, the Interstate Commerce Commission itself recognizes, and I think all counsel recognize that there are going to be certain changes in value during the interim, necessary for the consideration of this Plan, and that is left open to the Court to fix. That is, what the additional compensation will be. And, so that all parties will know at the very outset that the Court feels that way about it, that is why these lien provisions are being inserted in these orders.

As I said, I think the Atlantic Coast Line or anybody else that is similarly situated should pay, in addition to the compensation provided in the plan, the [78] reasonable value of whatever benefit in addition to that it receives, and I think the Bondholders should have restored to them, that of which they have been deprived, and to which they would otherwise be entitled, but, they are not entitled to any more than that.

BLEED THROUGH

Now, there was some suggestion here that the financing of these purchases was exactly the same as if you had gone to an outside bank or third party and borrowed the money. I think that in some substantial respects, that the two propositions are analagous, but I think there are some very important differences, one of which is that if you borrow from an outside third party, for instance a bank, they are not interested in depreciation or use and operation of the property. They are interested only in the fact that they have loaned so many dollars and they expect to get back so many dollars. And whether the mortgaged property depreciates or enhances in value or whether it makes a profit or runs at a loss, the mortgagee is not interested in that at all, and that is none of their concern. That is where this situation materially differs from that kind of a situation. Here, this property is being operated from now, at least until the consummation of the plan, for the benefit of these same security holders who are loaning the money. They [79] will receive the benefit of the operation of that property during these two or three or four years, whatever it is, until this question is decided, and it may be that from that operation in their interest, they will have restored them, some part of that of which they have been deprived in the payment of this purchase price, or, it may go the other way. They may lose more money.

It is reasonably apparent, also, that those locomotives, if operated for a substantial period of time, perhaps over a period of two or three years, that they will depreciate and at the end of that time they will not be of the actual physical value that they are now, when they are new. That is obvious. Now, that is not altogether a complete answer to say that they will be compensated for by the fact that, assuming these locomotives are purchased, they will be depreciated $156,000.00, and that amount, on the books, carried against income.

That will unquestionably be done for income tax purposes, but I do not have any idea that the Trustees are

going to take $156,000 and put it over in another bank account. That never is done. So, you see, there are lots of countervailing considerations all the way around in this situation.

[80] It may be that if this were the ordinary reorganization in which an internal reorganization was being perfected for the benefit of the existing security holders, I would order it paid out of income; that is, these things to be purchased. That would be the end of that, because it would all work out to the same thing in the long run.

The situation was drastically changed, and vitally so, because of the entrance into the picture of a strange—not a stranger, but a newcomer, who is not a present security holder, nor even a creditor, except in a nominal sense as the owner of an open account, open claim, which the Interstate Commerce Commission has said at least twice, or maybe three times, was of no value. But, as I have said before, notwithstanding the absence of the status of a substantial creditor or security holder, the Atlantic Coast Line occupies the position here which is one of substantial importance to say the least of it, by virtue of the fact that the Interstate Commerce Commission has found that it is in the public interest that the Coast Line receive and operate this railroad in the future. That gives them a substantial standing in this whole picture.

So, the Court has not changed its mind at all about this lien. The Court's mind is exactly the same [81] as it has been heretofore and the lien provisions will be put in the orders just exactly like in the others. But, what has been said here today was brought to my attention for the first time, these discrepancies in value that may be reasonably anticipated. That has not been mentioned in any of the previous arguments, and it had not occurred to me that this whole thing was not being consummated as of now, the immediate present. I think the lien orders should stand just as they are. I think they are still the appropriate orders, but I am interested and impressed with what has

BLEED THROUGH

been said here today about the lapse of time and the depreciation that may occur during that time.

I do not think the Atlantic Coast Line should be made to pay, nor the creditors receive, a lien for the purchase price, brand new, of a locomotive which has been run for three years. I do not think that requires any argument to justify that situation. I do not think the Atlantic Coast Line ought to be obliged to pay or required to pay for any more than it receives, nor, any less, either. On the other hand, I do not think the creditors, these Five Percent Bondholders, are entitled to receive back any more—I do not think they are entitled to make any profit out of this transaction. They are entitled to be made whole. No more and no less. [82] It may be that in this interim that ensues before this question is finally determined, the operation of this property for the benefit of these security holders will restore to them a portion of what they have been deprived of, and thereby reduce their claims, equitably, by that amount.

On the other hand, it may be that the operation of the property will go further into the red and the creditors will occupy no better position by reason of the operation. Of course, I do not think the losses in the operation should be charged against the Coast Line either, but I am saying the position of the Creditors would, in that event, certainly be better than the position of the Security Holders.

Therefore, in order to meet these situations and to enable the Court to do what the Court thinks, at least, is required to do complete justice between the parties, I am going to add a paragraph to the orders which will be entered here on these petitions, reading as follows:

"The Court reserves jurisdiction to redetermine the amount of said lien, if equitable considerations so require, at the time of final consummation of this Reorganization. The orders of July 17, 1947, July 25, 1947, and May 25, 1948, are also amended by adding [83] thereto, the same paragraph".

Taken from Transcript of Hearing, October 1, 1948.

Now, I trust I have made myself clear, gentlemen. I have not changed my mind one bit about the lien, but it is called to my attention for the first time that these discrepancies may occur during this interim which intervenes between now and the final decision in this Reorganization.

I do not think the Atlantic Coast Line ought to be compelled to pay for more than it receives on account of that, and I do not think the Creditors ought to be either penalized or rewarded for anything that may happen during that interim, and for that reason, I am going to leave the lien there and clear it up in the precise amount in which the expenditures are now made. That is, presently to be made. That if, when we get to the final consummation of this Reorganization, it appears that equitable reasonableness requires the Court to review such lien because of the fact that the Creditors have already been, in part, repaid, or, for any other reason, then of course the Court will certainly do so.

Now, does anybody want to be heard any further?

Mr. Adair: Your Honor, your Honor has used the term, "At the time of the final consummation." May I not suggest that it would be a little safer if you [84] give it a little more elasticity by saying, "at or before". "At or before the final consummation of the Plan."

The Court: Well, I do not see how it could be considered much before.

Mr. Adair: Well, your Honor, we are to have the hearings on the Plan here next week, and I do not think, upon consummation of the plan——

The Court: No, I mean to say this: I mean, prima facie, and at this time the Creditors that have advanced such money are entitled to a lien for the purchases in excess of what the Interstate Commission has included in the Plan, as compensation to the Security Holders. Now, you gentlemen pointed out that a lot of time would elapse before that will be determined, and these locomotives won't be new, and I can see that. That is clear enough to me.

BLEED THROUGH

And, it is also clear enough to me that in that same interim those locomotives and this other property is going to be operated for the benefit of the Five Percent Bondholders, and they may be given the benefit of it. On the other hand, they may lose. I do not know. What I mean to say, that in the end, when this thing has been to wherever it is going, and has come back and it comes down to the day for me to say what the Court will [85] do pursuant to that general clause in the Interstate Commerce Commission's Plan, which Mr. Bourne read here this morning, that at that time we will balance accounts, and if I think the lien as originally entered up is more than what the Atlantic Coast Line should then receive, if that be the outcome, then I will reduce the lien accordingly. If, on the other hand, the whole plan falls down and comes to naught and we have to start again, why everything washes itself out anyway.

Mr. Adair: All right, your Honor, I understand.

Mr. Patterson: If your Honor please, I do not want to argue the case, but your Honor has made some statements there, embracing certain arguments that Mr. Bourne made, with which I strongly disagree; as to the question of re-determination. I do not want to engage in any argument. I just do not want your Honor's statements to be considered——

The Court: Just a moment. Do not interpret what I have said as being a confirmation or acceptance of argument made by any of you.

Mr. Patterson: All right, sir.

The Court: I can just see the possible involvement, and I think the Court should make provision for it, and I am willing to do so, and I do not want anybody, four years from now, to question what the Court thinks [86] about it. That is what I am doing now; that everybody here may be advised, and, that everybody who runs, may read.

What is it, Mr. Milam?

Taken from Transcript of Hearing, October 1, 1948.

Mr. Milam: I just want to make clear my understanding of what the Court thinks depreciation is. I quite readily understand the Court's view that if the Coast Line is required to take a Diesel engine four years old, purchased today, it should be allowed depreciation, but I do not understand the Court to mean that if there is some sum to be paid as apparently set, to the Coast Line, the amount of depreciation on that specific engine, in addition to the engine itself, that the Court will then allow the depreciation twice.

The Court: I certainly will not allow depreciation twice, but I do not think your question can be answered at this time, or, briefly, at any time. I recognize the distinction between bookkeeping for income tax purposes and for purposes of paying off the creditors. I make quite a distinction.

Mr. Bourne: I would like to say this much, if I may, your Honor. That is, if I did not understand before, I now understand what your Honor has had in mind, and my recommendation to the Coast Line would be to accept the terms of the orders as you have laid them [87] down. I would like to say that I would not like my silence, such as it may be, to be taken as acceptance of all of the reasons that your Honor has given. I recognize that if I did nothing about it, I may be bound by it.

The Court: All you are required to accept is an order, which may be wrong. Most of them, although brief, may be possibly wrong.

Mr. Bourne: They are not wrong. I wanted to be sure I was correct in my view.

The Court: All that I am doing is advising all of the parties that I am entering up the lien for the full amount now, and if in the end, equitable consideration should require a change in that amount, that the Court will then consider it and make it. Whether there will be such a change or not is an open question to be decided at some future time.

BLEED THROUGH

Taken from Transcript of Hearing, May 17, 1948.

Now, Mr. Reporter, I will dictate the added paragraph again, so that you can put it separate and write it up for Mr. Frink and let him have it. Now, this is the additional paragraph:

"The Court reserves jurisdiction to re-determine the amount of said lien, if equitable considerations so require, at the time of final consummation of this reorganization. The orders of July 17, 1947, July 25, [88] 1947, and May 25, 1948, are also amended by adding thereto, the same paragraph".

You can write that up and let Mr. Frink have it so he can insert it in the orders. I have not had time to examine them in all other respects, yet, but I will look them over.

• • • • • •

Portion of Transcript of District Court Hearing, May 17, 1948.

[110] The Court: • • • The Court is content with and adheres to the language with respect to the creation and impressing of a lien, as is contained in the former orders of July 17th and July 25th, 1947, and the Court sees no sufficient reasons to depart therefrom.

Briefly, as I have stated before, these betterments and improvements are not included, by the Interstate Commerce Commission, in its Plan of Reorganization, and therefore the value of those improvements has not been taken into consideration as a part of the value fixed by the Interstate Commerce [111] Commission upon this property. It is in addition to that, and the money which is to pay for it would otherwise be the money, and is the money which the Five Percent Bondholders are entitled to. They are being compelled, in a sense, or, in substance, compelled to loan that money to the Trustees, and they are entitled to their security upon it, ahead of and in a superior status to any interest acquired upon reorganization, but subject to the First Mortgage Bonds. That money goes to purchase property from which some one, on reorganization, will secure benefits, and

this money that is being taken would otherwise go to the Five Percent Bondholders and they must be secured and they must be compensated justly and adequately for that taking.

I do not approve the general form or order suggested here by Counsel for the Atlantic Coast Line, for the very reason that it is too general and too broad. I want it to specifically appear in the record, just what the Court's attitude is about this money, and that is that it is a loan from the First and Refunding Five Percent Bondholders to the Trustees for the purpose of improving this property. In the past that has been simply in the nature of an advance by these bondholders for the purpose of [112] improving what was then regarded as property of which they were the equitable owners and on which they would reap the ultimate benefit and therefore, the general clause in the order that priority would be determined hereafter, was appropriate and adequate. But now, with the very vital and drastic change in the situation, here, we must take notice of it in the order, and I do not want anybody to have any misunderstanding about it, that this money is advanced for the benefit of and to be secured by a lien in favor of the Five Percent Bondholders, and that it is superior to everything except the First Mortgage; Four and a Half Percent Mortgage.

I do not think it should be made superior to that mortgage for this reason: Understand me, I think that the Court has the power to make it superior to both mortgages, just as if the money was loaned by a third party. I think these bondholders who do advance the money, in effect loan it, are entitled to be secured just as certainly and just as adequately as if they were third parties, now, in the present circumstances. But, I do not think they are entitled to be preferred at this time, over the First Mortgage. The Court recognizes the soundness of the [113] law urged by Mr. Patterson here this morning, that is the law in Florida to the effect that a mortgagee holding a lien upon income has only an inchoate lien and it does not become a specific or fixed lien until there has been a default and a segregation

BLEED THROUGH

by the appointment of a receiver or by some other means. That segregation made made in the Equity Receivership, which obtained here from 1931 to 1940 or 1941. But the Equity Receivership has long since become functus officio. It technically exists on the docket but that is about all. It has been superseded by the reorganization proceedings in bankruptcy and the Reorganization Trustees have been appointed as successors—not as successors,—but to take over the property. I started to say "as successors to the Receivership Trustees". Technically, that is not accurate. The Receivership Trustees have ceased to control the property. I believe it technically exists on the record, but no more than that. At least the property has been turned over to the Reorganization Trustees, and in the reorganization proceedings, the First and First & Refunding Mortgage Trustees stand alike. They have both intervened here and filed petitions for the protection of their interests and stand alike as parties to the record, each with the same provisions [114] in their mortgage concerning the income from the property, but, the Four and a Half Percent Mortgage is prior in time. The income and earning clauses, as has been said this morning, are the same in both, but the Four and a Half Percent Mortgage, admittedly, is prior in time. What the Five Percent Bondholders now have, is subject to the valid provisions of the Four and a Half Percent Mortgage, and I do not see any reason now to step them up over that mortgage.

I do not want anybody to interpret, or rather misinterpret, what the Court is saying now, as any ruling or indication upon the priority of liens as between these two mortgages or between them and anyone else. The Court has no intention of doing that. All that the Court has done and does now, is to say that this lien order remains the same; that the lien is subject to the Four and a Half Percent Mortgage lien and superior to any interest acquired on reorganization. That is as far as the Court goes. So, do not distort it into anything else.

UNITED STATES OF AMERICA)
) ss.
SOUTHERN DISTRICT OF FLORIDA)

I, EDWIN R. WILLIAMS, Clerk of the United States District Court in and for the Southern District of Florida, and as such the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered as follows: VOLUME I, Fifth Supplemental Report of the Interstate Commerce Commission, Pages 81 through 191, inclusive, Sixth Supplemental Report of the Interstate Commerce Commission, Pages 195 through 226, inclusive, and Pages 1 through 236, inclusive; VOLUME II, Pages 237 through 715, inclusive, and VOLUME III, Pages unnumbered but containing Lynch Interests Exhibits Nos. 1-A to 22-A, 25-A, 26-A, 27-A and 28; St. Joe Paper Company Exhibits A to Z and AA to DD, Deposit Committee Exhibits Nos. 1 to 8, and Atlantic Coast Line Railroad Company Exhibits Nos. 1 to 10 and A, contain a true copy of all such papers and proceedings in the cause of Florida East coast Railway Company, Debtor, Atlantic Coast Line Railroad Company, Appellant, vs. St. Joe Paper Company, et al., Appellees, as appear upon the records and files of my office which have been designated by the agreement of the parties to be printed prior to the transmission of the original transcript of record to the United States Court of Appeals.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Jacksonville, Florida, on this the 30th day of June, A. D. 1952.

(SEAL) (Signed) EDWIN R. WILLIAMS

EDWIN R. WILLIAMS, CLERK
U. S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA.

POOR COPY

That thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Fifth Circuit, viz:-

ORDER TO HEAR CASE "EN BANC".

Extract from the Minutes of September 27, 1952.

IN THE MATTER OF FLORIDA EAST COAST
RAILWAY COMPANY, Debtor,

ATLANTIC COAST LINE RAILROAD COMPANY,

No. 14163 versus

ST. JOE PAPER COMPANY, ET AL.

Upon due consideration, in accordance with Section 46(c), Title 28 U. S. C. A., IT IS ORDERED by a majority of the Circuit Judges in active service that the above styled and numbered cause be heard before the court en banc at the ensuing Atlanta session.

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ARGUMENT AND SUBMISSION.

Extract from the Minutes of October 18, 1952.

ATLANTIC COAST LINE RAILROAD COMPANY,

No. 14163 versus

ST. JOE PAPER COMPANY, ET AL.

On this day this cause was called, and after argument by Edward W. Bourne, Esq., and Charles Cook Howell, Esq., for appellant, and Giles J. Patterson, Esq., Clifton S. Thomson, Esq., Miller Walton, Esq., J. Turner Butler, Esq., Donald Russell, Esq., Sidney S. Alderman, Esq., Edward J. Hickey, Jr., Esq., and Howard P. Macfarlane, Esq., for appellees, was submitted to the Court.

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OPINION OF THE COURT, AND DISSENTING OPINION OF RUSSELL CIRCUIT JUDGE, WITH WHOM BORAH, CIRCUIT JUDGE, JOINS, filed January 17, 1953.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 14163

IN THE MATTER
OF
FLORIDA EAST COAST RAILWAY COMPANY,
Debtor.
ATLANTIC COAST LINE RAILROAD COMPANY,
Appellant,

versus

ST. JOE PAPER COMPANY, ET AL.,
Appellees.

Appeal from the United States District Court for the Southern District of Florida.

(January 19, 1953.)

Before HUTCHESON, Chief Judge, and HOLMES, BORAH, RUSSELL, and RIVES, Circuit Judges.

HUTCHESON, Chief Judge: On the former appearance of this case here, all the controlling questions of law presented on this appeal were considered and determined, and

what we write with respect to them this time will be but a rethreshing of old straw. Because this is so, and particularly because the judgment appealed from and the reasons given in support of it in the trial judge's opinion [1] run counter to, indeed, if given effect would rewrite, the law of the case as we have declared and established it, a brief resume of what has gone before will go far to dispose of this appeal.

When the cause was here before on an appeal from an order disapproving a plan of reorganization adopted by a six to five vote and referring the proceedings back to the commission for further effort to make a proper plan,[2] this court, one judge dissenting, ordered the judgment affirmed.

As will appear from even the most cursory reading of the three opinions [3] written in this court, while only one of the judges agreed with the trial judge throughout, the other two did agree with his view of the relation of commission and court in a Section 77 reorganization proceeding. This was: that the congress had by statute brigaded commission and court, with the commission in the lead; that to the informed discretion of the commission it had confided the determination of the question of compatibility of the plan with the public interest; and that, except as to the question of unconstitutional taking, it had also confided to the commission the question of valuation.[4]

1 In Re: Florida East Coast Railway Co., 103 Fed. Supp. 825.
2 In Re: Florida East Coast Railway Co., 81 Fed. Supp. 926.
3 Atlantic Coast Line Ry. Co. v. St. Joe Paper Co., 179 F(2) 538.
4 Said the trial judge:
"* * * Neither in the hearing for approval, nor in that for confirmation notwithstanding rejection, *is the judge required to consider compatibility with the public interest; though the commission is so re-*

BLEED THROUGH

The two judges who voted for affirmance of the judgment agreed that on the record then made, the trial judge was right, in characterizing the plan, as having been determined upon without a sufficient showing of a due recognition of the rights and equities of the bondholders, and in determining that the plan was not fair and equitable, but was one which, if carried out, would result in depriving them of their property without just compensation. It was on this ground, with which we agreed, that agreement to affirm the judgment was reached.

Two of the judges, the writers of the prevailing and dissenting opinions, were in general agreement with each other that under subsection (b), expressly providing for a merger, the commission, without the consent, indeed over the opposition, of substantially all of the 5 percent bondholders, could lawfully propose and approve a plan providing for what the trial judge called a "forced merger", that is a merger of East Coast and Coast Line. They were, therefore, united in disagreeing with the view advanced by the trial judge that the commission could not do so.

These two judges differed with each other only in this. The dissenting judge thought and said: that the

quired. At the end of subsection (e) it is provided that if it shall be necessary to determine the value of any property for any purpose the commission shall determine the value and certify it to the court, observing certain standards as to the property used in railroad operation. I conclude that the matter of compatibility with the public interest of a plan is left to the opinion of the commission and is not to be reviewed by the judge. Also that certifications of value by the commission are in general final if the legal standards have been observed. *Both are within the peculiar expertness of the commission. * * * I have no function to review the matter of compatibility with the public interest of the plan; or the valuation of the property involved unless on the question of unconstitutional taking of it; * * *".* In Re: Florida East Coast Ry. Co., 81 Fed. Supp. at 931-32. **(Emphasis supplied.)**

commission *could* do this, *and in this case had properly done so;* and that the trial judge was wrong in disapproving the plan. The writer of the prevailing opinion, though in full agreement with the dissenting judge, that the commission *could propose and* approve such a plan, thought and said: that the trial court's judgment disapproving the plan should be affirmed *not because the plan provided for such a merger,* but because, on the record showing that substantially all the bondholders opposed it, it did not sufficiently appear that the constitutional right of the bondholders to receive the equivalent of what they were required to surrender was fully accorded. He was of the opinion, in short: that the record showed that the plan had been arrived at without that due consideration of the rights of the bondholders which would assure that they would certainly receive the equivalent of what they were to surrender; and that this was due to the too intense preoccupation on the part of a bare majority of the commission with the merger feature of the plan.

Because there were so many areas of agreement existing not only between him and the dissenting judge, but between all of the judges, including the trial judge, the writer of the prevailing opinion undertook to point up and make them clear.

Because, too, it was claimed by the appellees that the trial judge had broadly decided that what he called a "forced merger" of the debtor with Coast Line would not be lawful under the statute merely because it frustrated the plans of some of the bondholders to reorganize in their own interest and run East Coast, the writer of the

BLEED THROUGH

prevailing opinion took the greatest pains to point out that, and why, this was not so.[5]

Finally, to make assurance doubly sure that there could and would be no basis for a misunderstanding, by the commission and the trial judge on the return of the plan to the district court, of the purport and effect of our decision, after pointing out that the commission's decision was based too much upon considerations of the public interest, too little upon an independent consideration of the interest of the bondholders, the opinion went on to say:

> "We agree with the trial judge that * * * such a forced merger as is now proposed is contrary to the statute.

[5] Agreeing with the trial judge that, upon the record before him, "such a forced merger as is now proposed is contrary to the statute", the opinion, however, went on to say:

"We are in no doubt, however, that a plan providing for what the trial judge broadly called a 'forced merger', that is, a merger over the objection of the debtor and all its creditors, might be lawfully certified to the court and lawfully approved and confirmed by it. *The trial judge, while using language broader than the precise determination before him required, recognized that this was so, in holding that the fact found by the commission, that St. Joe bought the bonds it holds with the desire and purpose to use them to own, control, and run the debtor railroad, and that the plan for merger with the Coast Line would frustrate that desire and purpose, was not a reason for refusing to approve the plan. He particularly recognized that if the evidence clearly established that the whole opposition to the plan, instead of being based upon the legitimate view that the merger with the Coast Line would not be as favorable to the rights and interest of the bondholders as an internal reorganization would be, and that the securities to be delivered to the owners under the forced merger plan are not the substantial equivalents of those they hold, was based upon such irrelevancies as desire for control, these objections would not be valid objections, and the plan should be approved and confirmed over them.*

The evidence establishes conclusively that this is not the case with the objections here. *Owners of something like $10,000,000 in amount of bonds are here protesting the plan as unfair to them, none of them asking that the control of the debtor be given to St. Joe.* Some of them are, indeed insisting that an internal reorganization would be better for their interests than an outside merger. All, however, are insisting that the proposed plan will be a forced merger giving to the Coast Line, at the expense of depriving the bondholders of their fair and equitable rights, properties worth far more than Coast Line is being required under the plan to pay the bondholders for them." 179 F(2) at 544. (Emphasis supplied.)

> In remanding the case, however, for further proceedings, we remand it for the purpose of working out a really fair and equitable plan and without prejudice in doing so to the due consideration of any fair and equitable plan for bringing this matter to an end, including such a plan providing for a merger with, or sale to, the Coast Line either with or without the approval of the security holders."

Returned to the commission, the matter was again fully heard in public hearings, which lasted for thirteen days and at which 2241 pages of testimony and 157 exhibits were added to the record. This time, upon the record as thus supplemented and in the light of our opinion, from which it quoted and to which it deferred, the commission handed down its fifth and sixth supplemental reports,[6] with an accompanying order approving by a vote of seven to three a fourth proposed plan of reorganization, and certified it to the district court for its consent.

This plan, similar in type to the third plan which was the subject of the prior opinions of this and the trial court dealt with above, provided that, with certain important exceptions, all the estate of East Coast should be vested in the Coast Line by merger, consolidation or transfer in exchange for cash to be paid and securities to be issued by the Coast Line of an amount and value found by the commission upon full and careful consideration to be at least equal to that of the securities to be exchanged therefor.

[6] 282 I. C. C. 81 to 191; 282 I. C. C. 195 to 226.

BLEED THROUGH

Following the certification of the plan to the district court and the filing of exceptions thereto, a hearing was had, and, on March 11, 1952, the trial judge entered an order in support of a plan proposed by him to end all commission plans. This plan was that the order, in addition to disapproving the commission's fourth plan, should dismiss the reorganization proceedings and, with the declared purpose of effecting a reorganization through a foreclosure in equity, direct the return to the equity receivership in which the properties of the debtor had been administered from August 31, 1931, to January 25, 1941.

In the opinion which formed the basis of his order, the trial judge declared himself to be in agreement with the expressed opinion of Judge Sibley and this court, that the determination of the public interest was not for the district court but was exclusively for the commission. Nevertheless, upon the basis of findings of his own, that an internal reorganization would not be contrary to the public interest and that there was no evidence to support the commission's finding that the merger as proposed by it was in the public interest and an internal reorganization as proposed by the bondholders was not, he rejected and refused to follow the commission's finding. In addition, he made findings of his own on the issue of valuation directly contrary to the findings of the commission.

On the basis of these findings, the opinion went on to declare in effect: that it was evident that the commission intended to persist in approving and presenting its plan for a merger; that, as trial judge, he could not and would not approve such a plan; that an impasse had therefore

resulted; and that, because it had, the reorganization proceedings must be dismissed and a reorganization effected under the leadership of the district court in the equity receivership.

Appealing from this order, Atlantic Coast Line is here vigorously complaining of it. One of its complaints is that, in rejecting the commission's findings as to the public interest and as to valuations, and in substituting his own opinion therefor, and thus failing and refusing to accord to the findings of the commission in these two respects the weight and authority accorded them by the statute, the trial judge has grievously erred.

Another is that, in addition to the error of refusing to accord due weight to the commission's findings, the trial judge has committed a further and more grievous error in holding in effect that, since the majority of the commission persists in submitting a plan for reorganization through a merger of the two companies, over the objection of the 5 percent bondholders, the leadership of the commission must be rejected, the reorganization proceeding dismissed, the long dormant equity receivership revived and reactivated, and an internal plan of reorganization, acceptable to the bondholders, must be effected under the leadership of the district judge.

We are in no doubt that, between the determination of the trial judge, on the one hand, that the reorganization must be an internal one, and his rejection, therefore, of the commission's finding that a merger was in the public interest, and the determination of the commission, in accordance with, and upon full consideration of, the

BLEED THROUGH

record, that a merger with the Coast Line was in the public interest and an internal reorganization was not, an impasse has been reached. That this is so, however, is not at all determinative of the question presented by this appeal. This question is whose is the fault. Did the commission err in again formulating and reporting a plan for a merger with Coast Line, or did the trial judge err in disapproving such a plan and dismissing the proceedings, because of his opinion in effect: that in both the public and private interest an internal reorganization is demanded; that because of the persistence of the commission in insisting on its plan for a merger, it has become necessary for the district court to wrest the leadership from the commission in order by foreclosure to effect an internal reorganization.

If the fault is with the commission, then the judge was justified in turning elsewhere for a plan and in resorting as the first step in that direction to the statute providing for a dismissal of the reorganization proceedings. If, however, the shoe is on the other foot and the fault for the impasse was the erroneous refusal of the trial judge to follow the lead of the commission when that leadership was in accordance with law, that is when its findings were supported by the evidence, then the court was not justified in disapproving the plan and dismissing the proceedings.

Turning, for the correct answer to this question, to the record as it now stands before us, we are not in any doubt that, under the plain terms of subsection (b)(5) of Sec. 77 of the Act, Sec. 205, 11 U. S. C. A. which provides that the plan "may include the transfer of any interest in, or

control of any part of the property of the debtor to another corporation or corporations, the merger or consolidation of the debtor with another corporation or corporations * * *", the commission was precisely authorized to formulate and recommend a plan providing, as the fourth plan does, for the merger of East Coast and Coast Line.

It is quite plain, we think, that in finding as he did, that this record, which includes the former record with all additions to it, contains no evidence supporting the commission's finding and recommendation as to the public interest, the trial judge went contrary both to the decision of the trial judge on the former hearing and to that of this court on the former appeal.

In his opinion, Judge Sibley did not find that there was no evidence to support the commission's finding as to public interest. On the contrary, he expressly declared that its finding with respect thereto was not subject to review by him. His difference with the commission was not based upon the want of evidence to support its finding but upon the fact that the refunding bondholders by an overwhelming majority refused to consent to the merger and his view, "I do not think the congress intended to force a merger undesired by the majority in amount of the affected party by permitting a merger to be part of a plan. * * * This conclusion ends this plan."

His rejection of the plan was not, therefore, based upon a want of evidence as to the public interest but entirely upon his view that the commission was without power under the statutes to propose a plan for what he called

BLEED THROUGH

a "forced" merger, that is a merger *nolens volens* the security holders.

The trial judge on this hearing, recognizing the law of the case to be that the question of what was in the public interest was for the commission and not for the court, and that the commission could lawfully propose a proper plan for a forced merger, did not base his rejection of the new plan on the ground on which Judge Sibley had based his, the want of power in the commission to propose such a plan. He put it on his finding that the commission's finding as to the public interest was without evidence to support it.

We have, therefore, again carefully examined the record made in this and the former hearing, and have found: that there is abundant evidence to support the public interest finding; that the trial judge was, therefore, in error in dismissing the proceedings on that ground; and that unless an examination of the record shows, as we thought it did on the former hearing, that the bondholders will not receive under this plan the equivalent in value of what they will part with, the judgment must be reversed and the cause remanded to the district court with directions to approve the plan.

A careful comparison of the present record with that presented on the former appeal convinces us that on its subsequent hearings, the commission gave not lip service merely but whole hearted fealty to the admonitions and directions of our opinion. Instead, therefore, of failing, as we found it did before, to show that the commission had given adequate consideration, independently of the

public interest question, to making sure that the bondholders would in the exchange receive the equivalent in value of the securities they surrendered, the record presented on this appeal shows a quite different situation. It shows a most careful and painstaking effort on the part of the commission to properly, adequately, and independently value both the securities held by the bondholders and those to be received by them in exchange and that its finding that the plan was fair and equitable finds full support in the evidence.

Indeed, an examination of all the testimony now available touching on and dealing with the valuations which under the statute it was for the commission to make, demonstrates, we think, beyond any peradventure that the commission's findings and estimates of the respective future earnings of East Coast and Coast Line and of the present and future values of the securities to be given in exchange for each other was most favorable to the bondholders of East Coast.

The same careful examination shows that but for the fact, which apparently dominates and controls most of the bondholders in this controversy, that they are primarily concerned not with obtaining value received for their securities but for a conversion of their bonds into a title to the East Coast properties, so that they will own and manage the railroad, all of them would be bound to agree that what they will receive for their bonds under the plan will be of a value equal to, or more than, that of their bonds.

BLEED THROUGH

It will, therefore, serve no useful purpose for us to take up one by one, as the appellants and appellees have done, to dissect and discuss them, the findings made and reasons given by the commission, on the one hand, and those set out in the lengthy opinion of the trial judge, on the other, to determine our agreement or disagreement with each of them in turn. Particularly will it not be of any value for us to resolve the issue, of which the trial judge and the parties have made so much, whether, in determining permissible capitalizations, the commission used arbitrary multipliers, as the appellees and the trial judge say it did, or whether, as the commission [7] and the Coast Line say, it did not. Neither will it advantage us to consider and discuss the testimony of the various witnesses, witness by witness and testimony by testimony, to compare the trial judge's conclusions as to them with those of the commission.

Too much has already been written in this case. Enough of contention, of conflict, and of name calling has already gone on without our adding more. It will suffice for us to say that, bearing in mind the controlling decisions [8] and the law of the case as determined on the former appeal, and considering the record in the light of the undoubted primacy to be given to the fact findings of the commission, we are of the clear opinion: that the findings of

[7] "Permissible capitalizations are not determined by us solely, as these petitioners apparently assume, by capitalizing assumed earnings at stated percentages. The determinations of capital structures for reorganized railroads are not such simple matters. Such computations admittedly are important checks or steps in the final determinations, but a careful reading of our fifth supplemental report will clearly show that many other factors were taken into consideration in determining the permissible capitalization of the debtor under a hypothetical reorganization and the compensation which the Coast Line should pay for the debtor's properties." 281 I. C. C. 203.

[8] Case v. Los Angeles Lbr. Co., 308 U. S. 106, 115; Reconstruction Finance v. Denver & Rio Grande, 328 U. S. 405; Securities & Exchange v. Central Ill., 338 U. S. 96, 110, 111, 113, 127.

the trial judge, rejecting the commission's findings as to the public interest and as to valuation, and declaring that the plan is unfair and inequitable, are themselves without support in law or in fact; and that his judgment refusing to approve the plan and dismissing the reorganization proceedings may not stand.

The order appealed from will, therefore, be reversed and the cause remanded to the district court with directions to approve the plan, and to take further and not inconsistent proceedings with respect to it.

We think that our views on the question of the so-called cram down section of the statute[9] have been sufficiently presented in our former opinion at pp. 544 and 545, and that no useful purpose will be served by further discussing them at length here. We think, though, that we should restate, what we stated in that opinion: that that section has to do with individual complaints of unequal and unlike treatment; and that the refusal of the 5 percent bondholders, when called upon under subdivision (e) to accept the plan merely because they prefer an internal reorganization, will not justify the trial judge in refusing to approve it under the so-called cram down provision of the statute.

It is not meant by this to say that if conditions should so change between now and the time the plan is to be

[9] Subdiv. (e) of Sec. 205, Title 11 U. S. C. A. "Court hearing after approval by Commission; acceptance of plan by creditors and stockholders; confirmation of plan by court; valuation of property", which provides that if the plan has not been accepted by the creditors and stockholders, the judge may nevertheless confirm the plan if he is satisfied and finds after hearing that it makes adequate provision for fair and equitable treatment for the interests or claims of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights and interests of those rejecting it, and all the relevant facts

BLEED THROUGH

put up for final acceptance under subdivision (e) that the plan would no longer be a fair and reasonable one, the court could not consider the changed facts and act accordingly. It is to say, though, as has been so often already said in this case by both the trial judge on the former opinion and by this court, that the set and stubborn determination by any or all of the creditors to withhold approval of the plan, merely because they bought their bonds for the purpose of obtaining control of the railroad and will not agree to any other plan under subsection (e), the "cram down" section, may not be accepted as adequate or lawful grounds for opposition.

The judgment is reversed and the cause is remanded with directions to approve the plan and thereafter to proceed under the statute not inconsistently herewith.

RUSSELL, Circuit Judge, with whom BORAH, Circuit Judge, joins, dissenting:

So much has already been written in the several appearances of this matter before the Interstate Commerce Commission and the Courts that the temptation is present to avoid further cumbering the record by merely noting dissent from the judgment and there letting the matter rest. However, that which is here the controlling question, in the sense that upon its determination depends all further assumed authority to proceed with the details of the matter, is of such far reaching importance and so fundamental to the protection of property rights against invasion under the guise of serving the public interest, that at least some bare outline of the reason for disagree-

ment seems obligatory. Such question is present in this case in the form of the claimed power of the Interstate Commerce Commission, in proposing a plan of reorganization under the provisions of Section 77 of the Bankruptcy Act, to require the equitable owners of the debtor, who are united in opposition to such a plan, to surrender their interests in a going and efficiently operated railroad, for undesired rights in another railroad system. While the result of the proposed plan, which the majority now approves, may be denominated a "merger", as well said by the trial Judge, "[i]t is in fact an enforced, non-competitive sale of F. E. C. to A. C. L., a wholly unrelated corporation, over the objections of 99% of the present bondholders whose property interests are at stake, and who do not wish to sell, and over the active protest of F. E. C. employees whose jobs and seniority rights are also at stake, and who do not wish to be forcibly transferred to Atlantic Coast Line. The plan virtually gives A. C. L. the power of eminent domain over F. E. C., with authority to pay, not in cash, but 90% in Coast Line securities of debatable value." It is these equitable owners of the property who would be entitled to the stock of the reorganized Florida East Coast Railroad. There is no question here of the relative rights of the creditors among themselves, nor is this the usual case where there is objection by only minority interests. The bald proposition established by the majority opinion is that the court's power in bankruptcy authorizes the taking, against the wishes of the overwhelming majority of the refunding bondholders, of their existing rights, requiring acceptance by them of an entirely different and unrelated security which they do not desire. This holding poses a serious constitutional question as to whether the court's power

BLEED THROUGH

in bankruptcy could thus be extended to force a merger consistent with the Fifth Amendment. However, in my view of the case I do not reach the constitutional question because here it is clear from the history of the legislation of Section 77, that the Commission has undertaken to exercise a power which the Congress never intended to confer on the Commission. This was well pointed out by Judge Sibley in his decision while sitting as District Judge in a former proceeding in this matter. *In Re Florida East Coast Railway Co.*, 81 Fed. Supp., 926. This view was expressly approved by the writer in his special concurrence upon the former appeal of this case. *Atlantic Coast Line v. St. Joe Paper Co.*, 179 F. (2d) 538, 545. It is reaffirmed today.

JUDGMENT.

Extract from the Minutes of January 19, 1953.

IN THE MATTER OF FLORIDA EAST COAST
RAILWAY COMPANY, Debtor,

ATLANTIC COAST LINE RAILROAD COMPANY,

No. 14163 versus

ST. JOE PAPER COMPANY, ET AL.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that said cause be, and it is hereby, remanded to the said District Court with directions to approve the plan and thereafter to proceed under the statute not inconsistent with the opinion of this Court;

It is further ordered and adjudged that the appellees, St. Joe Paper Company, and others, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"Russell & Borah, Circuit Judges, dissent."

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CLERK'S CERTIFICATE,
UNITED STATES OF AMERICA,
UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT.

I, Oakley F. Dodd, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 716 to 734 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 14163, wherein In the Matter of FLORIDA EAST COAST RAILWAY COMPANY, Debtor - ATLANTIC COAST LINE RAILROAD COMPANY is appellant, and ST. JOE PAPER COMPANY, ET AL., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, Volumes I. and II., numbered from 1 to 715, and Volume III., Pages unnumbered but containing Lynch Interests Exhibits Nos. 1-A to 22-A, 25-A, 26-A, 27-A and 28; St. Joe Paper Company Exhibits A to Z and AA to DD, Deposit Committee Exhibits Nos. 1 to 8, and Atlantic Coast Line Railroad Company Exhibits Nos. 1 to 10 and A, are identical with the printed record upon which said cause was heard and decided in the said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 19th day of February, A. D. 1953.

Oakley F. Dodd

Clerk of the United States Court
of Appeals, Fifth Circuit.

[fol. 737] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 670

ST. JOE PAPER CO., JESSE BALL DUPONT, ELBERT DENT, et al., Petitioners,

vs.

THE ATLANTIC COAST LINE RAILROAD CO.

No. 702

S. A. LYNCH, S. A. LYNCH CORPORATION, et al., Petitioners,

vs.

THE ATLANTIC COAST LINE RAILROAD COMPANY

No. 705

J. BRYSON AIRD and BANK OF THE MANHATTAN COMPANY, Successor Mortgage Trustees, Petitioners,

vs.

THE ATLANTIC COAST LINE RAILROAD COMPANY, and

No. 710

W. G. WELBON, E. N. CLAUGHTON, and A. W. CORBETT, Petitioners,

vs.

THE ATLANTIC COAST LINE RAILROAD COMPANY

ORDER ALLOWING CERTIORARI—Filed May 4, 1953

The petitions herein for writs of certiorari to the United States Court of Appeals for the Fifth Circuit are granted limited to question 1 presented by the petition for writ of certiorari in No. 670.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petitions shall be treated as though filed in response to such writs.

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